

**DEPARTMENT OF TRANSPORTATION**  
Title 17, Chapter 5, Article 3, Vehicle Registration



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 31, 2019

**SUBJECT:** **ARIZONA DEPARTMENT OF TRANSPORTATION (F19-0702)**  
Title 17, Chapter 5, Department of Transportation - Title, Registration, and Driver Licenses

**New Sections:** R17-4-351, R17-4-352

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### **Summary:**

This rulemaking, from the Arizona Department of Transportation (Department), creates two new rules in Title 17, Chapter 5, related to Titles, Registration, and Drivers Licenses. More specifically, the new rulemakings are necessary to update license plate rules regarding duplicate license plates in 17 A.A.C. 4, Article 3.

The Department indicates that it is engaging in this rulemaking to add rules to establish a duplicate special license plate fee. The Department chose the effective date of October 1, 2019 for this rulemaking in order to implement all Department changes simultaneously, streamline programming costs, and to benefit the public and the Department.

The Governor's Office granted approval on June 14, 2018 to implement rule changes necessary to update the license plate rules in 17 A.A.C 4, Article 3, relating to the receipt of a duplicate special licence plate.

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

Yes. The Department cites to both general and specific authority for the rules.

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

Yes. The rulemaking contains a new fee authorized by A.R.S. § 28-2351(A). The rulemaking creates a new fee of \$10 for requested duplicate special license plates.

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

No. The preamble certifies that the Department did not rely on or review any studies in the Department's review, evaluation, or justification for the rules.

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

This rulemaking implements statutory changes made in 2018 legislation, which requires the Arizona Department of Transportation (ADOT) to establish a duplicate special license plate fee in rule. A vehicle owner who requests a duplicate special license plate is required to pay the duplicate special license fee established in this rule.

The Department is establishing a one-time fee of \$10 for each duplicate special license requested. ARS § 28-2151 also authorizes the Department to charge a vehicle owner the current postage and handling cost to send a duplicate special license plate to a vehicle owner. The current postage and handling cost to mail a full-size license plate is \$5.53, or \$4.80 for a smaller license plate for a motorcycle or a small trailer. The average cost for the Department to manufacture a duplicate special license plate varies with different designs, but it costs \$3.50 on average. The Department has not included any administrative costs in this fee.

Stakeholders include the Department and drivers who request a duplicate special license.

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

The Department states that ADOT routinely chooses the rulemaking option that is the least costly and burdensome to those regulated by the rule. The Department believes that the benefits of the rules exceed the costs.

6. **What are the economic impacts on stakeholders?**

The rules will not impose any additional costs unless the stakeholder chooses a special license plate and pays the \$10 fee for a duplicate special license plate in addition to

postage costs. Revenue generated from duplicate special license plates is deposited in the Highway User Revenue Fund (HURF), which can only be used for state transportation infrastructure purposes.

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

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

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

The Department did not receive any written or oral comments from the public or stakeholders.

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

A license plate is a type of a general permit. As such, the agency is in compliance with A.R.S. § 41-1037.

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

No federal laws are applicable to the rules and the rules are not more stringent than federal law.

11. **Conclusion**

If approved, this rulemaking will become effective later than the usual 60-day effective date pursuant to A.R.S. § 41-1032. However, by changing the effective date of these rules to October 1, 2019, all new rules for the Department will become effective simultaneously, which will benefit the public and the Department. Council staff believes this is appropriate as there is a good cause and the public interest will not be harmed by a later date. Council staff recommends approval of this rulemaking.

May 9, 2019

Ms. Nicole Sornsin  
Chairperson  
Governor's Regulatory Review Council  
100 N. 15th Ave., Suite 305  
Phoenix, AZ 85007

Dear Ms. Sornsin:

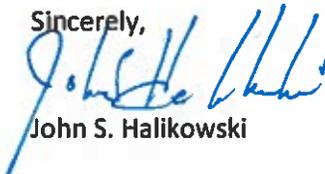
The Arizona Department of Transportation (ADOT) submits the accompanying final rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-201(A):

- a. The rulemaking record closed on May 8, 2019 and no public comments were received on these rules.
- b. The rulemaking activity does not relate to a five-year review report;
- c. The rulemaking contains a new fee that is authorized by A.R.S. § 28-2351(A);
- d. The rulemaking does not contain a fee increase;
- e. An immediate effective date is not requested for the rule under A.R.S. § 41-1032;
- f. The preamble certifies that the Department did not rely on or review any studies in the Department's review, evaluation, or justification for the rules; and
- g. No new full-time employees are necessary to implement and enforce the rules.

Documents enclosed in this final rule package are as follows:

- a. Signed cover letter;
- b. Notice of Final Rulemaking;
- c. Economic, small business, and consumer impact statement;
- d. General and specific statutes authorizing the rules, definitions; and
- e. Request for exemption from rulemaking moratorium and approval of exemption.

Sincerely,



John S. Halikowski

Enclosures

**NOTICE OF FINAL RULEMAKING**  
**TITLE 17. TRANSPORTATION**  
**CHAPTER 4. DEPARTMENT OF TRANSPORTATION -**  
**TITLE, REGISTRATION, AND DRIVER LICENSES**

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R17-4-351	New Section
R17-4-352	New Section

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

Authorizing statutes: A.R.S. §§ 28-366, 28-2351, 28-2151, 28-2401, 28-2403

Implementing statutes: A.R.S. § 28-2351

**3. The effective date of the rules:**

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

Not applicable

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

The Department selected an effective date of October 1, 2019 to allow the rules to be effective at the same time as other Department motor vehicle systems changes. The Department chose this date in order to implement this fee and major motor vehicle systems changes simultaneously, providing a benefit to the public by allowing customers to complete more transactions electronically and efficiently. This has also reduced programming costs, which is beneficial to the public and the agency. For these reasons, the Department believes good cause exists and the public will not be harmed by this effective date.

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

Notice of Docket Opening: 24 A.A.R. 3378, December 7, 2018

Notice of Proposed Rulemaking: 25 A.A.R. 745, March 29, 2019

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

Name: Jane McVay  
Address: Arizona Department of Transportation  
Rules and Policy Development  
206 S. 17th Ave., Mail Drop 180A  
Phoenix, AZ 85007  
Telephone: (602) 712-4279  
E-mail: jmcvay@azdot.gov

Web site: Please visit the ADOT web site to track progress of these rules and any other agency rulemaking matters at [http://www.azdot.gov/about/Government Relations](http://www.azdot.gov/about/Government_Relations)

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

The Arizona Department of Transportation received approval from Matt Clark in the Governor's Office on June 14, 2018 to implement rule changes necessary to update the license plate rules in 17 A.A.C. 4, Article 3, relating to receipt of a duplicate special license plate. A.R.S. § 28-2351(A), as amended by Chapter 279, § 3, Laws 2018, requires the Department to provide every vehicle owner with one license plate for each vehicle registered. A vehicle owner may choose a special license plate with a particular design if the owner is eligible to receive a specific special license plate. The statutory change requires the Director of the Department of Transportation to establish a duplicate special license plate fee in rule in an amount established by the Director for a person who requests a duplicate special license plate.

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

The agency did not review or rely on a 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:**

This rulemaking does not diminish a previous grant of authority to political subdivisions in this state.

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

Existing law provides that each motor vehicle registered in the state is required to have one license plate, which the Department provides at no charge. A vehicle owner who chooses a special license plate may request a duplicate special license plate. The duplicate special license plate fee of \$10 per special license plate is only applicable to a vehicle owner with a special license plate when requesting a duplicate special license plate. A.R.S. § 28-2151 also authorizes the Department to charge the estimated mailing cost to send a license plate to the owner. A vehicle owner currently pays postage costs of \$5.53 for a full-size license plate or \$4.80 for a special plate for a motorcycle or small trailer. With the current postage costs, a vehicle owner can purchase a duplicate special license plate including postage costs for \$15.53. Due to the fact that obtaining a duplicate special license plate is optional for most vehicle owners, the regulatory burden of the rules is primarily on those vehicle owners who voluntarily request a duplicate special license plate. The Department does not track the number of duplicate special license plates requested annually, but during FY 2017, vehicle owners requested over 450,000 special license plates.

A vehicle owner who has permanent physical disabilities may request a disabled special license plate. For a vehicle owner who has a wheelchair carrier or wheelchair lift and wheelchair attached to the vehicle, the owner is required by law to have a license plate on the rear of the vehicle and a license plate on the wheelchair carrier to ensure visibility of the license plate. Those vehicle owners who attach a wheelchair carrier or lift to their vehicles who need a duplicate special license plate after the rule's effective date, will be subject to this fee.

Those small businesses, as defined in A.R.S. § 41-1001, that have light duty vehicles with commercial registration that are used for commercial purposes 1,000 or more hours per registration year, can not obtain a special license plate, and would not be impacted under these rules. If a vehicle is registered in the name of a commercial enterprise, the vehicle must be registered commercially unless the applicant certifies that the vehicle is not used for commercial purposes. Subject to these requirements, some small businesses with light-duty vehicles that are not registered commercially, but are used commercially less than 1,000 hours per registration cycle, could choose a special license plate, and would be required to pay the duplicate special license plate fee and mailing costs.

The license plate manufacturing cost varies with different special plate designs, however, the average manufacturing cost for a duplicate special license plate is \$3.50. The Department has not included any administrative costs in this fee. If the Department included administrative costs other than manufacturing in the cost of a duplicate special license plate, it is likely that Departmental costs would have exceeded the \$10 cost of the duplicate special license plate. The Department incurs costs for this rulemaking and to program motor vehicle systems changes, including this fee to allow for electronic payment for a duplicate special license plate. In order to reduce total agency programming costs, the agency delayed implementation of the duplicate special license plate fee until other motor vehicle systems programming could occur.

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

No changes were made between the proposed rulemaking and the final rulemaking.

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

The Department held a public hearing on the rules on May 8, 2019, but did not receive any stakeholder comments at the hearing or prior to the close of record, which was on May 8, 2019.

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

None.

**a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The rules do not require a permit, however, a license plate is a type of general permit because the activities and practices authorized by each class of licensee are the same for all drivers with a special license plate.

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

No federal laws are applicable to the rules and the rules are not more stringent than federal law.

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

A business competitiveness analysis was not submitted to the Department.

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

The rules do not have any incorporations by reference.

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

The rules were not previously made, amended, or repealed as emergency rules.

**15. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION-  
TITLE, REGISTRATION, AND DRIVER LICENSES**

**Section**

R17-4-351. Special License Plate: Definition

R17-4-352. Duplicate Special License Plate

### ARTICLE 3. VEHICLE REGISTRATION

**R17-4-351. Special License Plate; Definition**

For the purposes of R17-4-352, "special license plate" or "special plate" has the meaning prescribed in A.R.S. § 28-2401.

**R17-4-352. Duplicate Special License Plate; Fee**

- A. The Department shall charge and collect from a motor vehicle owner a one-time fee of \$10 for each duplicate special license plate requested.**
- B. The Department shall charge and collect the current applicable U.S. Postal Service postage rate as provided in A.R.S. § 28-2151 and A.A.C. R17-1-204 to mail a duplicate special license plate to a motor vehicle owner.**

# ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

## TITLE 17. TRANSPORTATION

### CHAPTER 4. DEPARTMENT OF TRANSPORTATION -

#### TITLE, REGISTRATION, AND DRIVER LICENSES

##### R17-4-351 and R17-4-352

#### A. Economic, small business and consumer impact summary:

##### 1. Identification of the rulemaking:

This rulemaking implements statutory changes made in 2018 legislation, which requires the Arizona Department of Transportation (ADOT) to establish a duplicate special license plate fee in rule. A.R.S. § 28-2351(A) provides that notwithstanding any other law, the Department shall provide every vehicle owner one license plate for each registered vehicle. A vehicle owner who requests a duplicate special license plate is required to pay the duplicate special license plate fee established in this rule.

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

Under previous legislation, the Department provided every owner with one license plate for each registered vehicle. Previously, a vehicle owner who paid any fee required by the Department, could request either one or two license plates for a vehicle for which the owner requested a special license plate, but the Department did not have specific rulemaking authority to charge a fee for the duplicate special license plate.

##### 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:

Prior to passage of Laws 2018, Chapter 279, § 3, the Department provided every owner one license plate for each vehicle registered. At the request of the owner and on payment of any required fee, the Department was required to provide either one or two license plates for a vehicle for which the owner requested special license plates. The Department did not have specific rulemaking authority to establish a duplicate special license plate fee. A vehicle owner will no longer be able to obtain a duplicate special license plate at no cost and will need to pay a \$10 fee for each duplicate special license plate requested.

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

As a result of this rulemaking, an owner of a registered vehicle who requests a duplicate special license plate will be required to pay to the Department the new one-time \$10 fee to obtain each duplicate special license plate, which may reduce the number of requests for a duplicate special license plate.

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

The duplicate special license plate fee is applicable only for those vehicle owners who request a duplicate special license plate. At this time the Department has 69 special license plate designs. For some special license plates, the vehicle owner must be a member or former member of a certain organization, have a

certain type of vehicle, or may choose a special license plate in order to donate a portion of the initial or renewal special license plate fee to that organization. A vehicle owner is required to have one license plate on the rear of the owner's vehicle. The Department is establishing a one-time fee of \$10 for each duplicate special license plate requested. A.R.S. § 28-2151 also authorizes the Department to charge a vehicle owner the current postage and handling cost to send a duplicate special license plate to a vehicle owner. The current postage and handling cost to mail a full-size license plate is \$5.53, or \$4.80 for a smaller license plate for a motorcycle or a small trailer.

Those small businesses, as defined in A.R.S. § 41-1001, that have light duty vehicles with commercial registration that are used for commercial purposes 1,000 or more hours per registration year, can not obtain a special license plate, and would not be impacted under these rules. If a vehicle is registered in the name of a commercial enterprise, the vehicle must be registered commercially unless the applicant certifies that the vehicle is not used for commercial purposes. Subject to these requirements, some small businesses with light-duty vehicles that are not registered commercially, but are used commercially less than 1,000 hours per registration cycle, could choose a special license plate, and would be required to pay the duplicate special license plate fee and mailing costs.

**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: Jane McVay  
 Address: Arizona Department of Transportation  
 Rules and Policy Development  
 206 S. 17th Avenue, Mail Drop 180A  
 Phoenix, AZ 85007  
 Telephone: (602) 712-4279  
 E-mail: jmcvay@azdot.gov

**B. Economic, small business and consumer impact statement:**

**1. Identification of the 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 rulemaking:**

Persons to bear costs	Persons directly benefiting
Arizona Department of Transportation	Arizona transportation infrastructure users, residents, and tourists.
Drivers who request a duplicate special license plate	Arizona transportation infrastructure users, residents, and tourists.

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

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 rulemaking:**

In FY 2017 prior to the implementation of the duplicate special license plate fee, the Department received requests for over 45,000 special license plates. The Department anticipates incurring minimal costs to implement this rulemaking. The average cost for the Department to manufacture a duplicate special license plate varies with different designs, but costs \$3.50 on average. ADOT benefits from this rulemaking because the agency will be able to recoup the manufacturing costs for a duplicate special license plate and a portion of administrative and other costs. ADOT will receive additional revenue from this fee, which will be deposited in the Highway User Revenue Fund, which is used to fund transportation infrastructure projects that benefit Arizona residents and other travelers in the state.

ADOT will incur some minimal one-time programming costs to implement systems programming necessary to charge the duplicate special license plate fee. The Department delayed this rulemaking in order to minimize the programming costs involved. The programming costs would have been substantially greater to implement this provision earlier while extensive motor vehicle systems changes are ongoing. Minimal costs were incurred by the Department for this rulemaking. This rulemaking will not impose additional costs on any other state agency. The Department will not need to hire any new full-time employees to implement the rules. The Department believes that the benefits of the rules exceed the costs.

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

These rules will not impose any additional costs on political subdivisions.

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

These rules will not impact the revenue and payroll of businesses affected by the 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 rulemaking:**

The rules will not have any economic impact on private or public employment.

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

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

Those small businesses, as defined in A.R.S. § 41-1001, that have light duty vehicles with commercial registration that are used for commercial purposes 1,000 or more hours per registration year, can not obtain a special license plate, and would not be impacted under these rules. If a vehicle is registered in

the name of a commercial enterprise, the vehicle must be registered commercially unless the applicant certifies that the vehicle is not used for commercial purposes. Subject to these requirements, some small businesses with light-duty vehicles that are not registered commercially, but are used commercially less than 1,000 hours per registration cycle, could choose a special license plate, and would be required to pay the duplicate special license plate fee and mailing costs.

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

The rules will not impose any additional costs on small businesses unless the business chooses a special license plate and pays the \$10 fee for a duplicate special license plate in addition to postage costs.

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

A.R.S. § 28-3153(A) does not allow the Department to charge a small business owner a lower fee for a duplicate special license plate. All motor vehicles registered in the state are required to have an appropriate Arizona license plate. Certain small businesses may choose to obtain a standard license plate for their vehicle, which is available at no cost.

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

A person who has a motor vehicle, motorcycle, trailer or semitrailer is required to display a license plate on the rear of the owner's vehicle. A vehicle owner may choose to purchase a special license plate for the owner's car, which must be located on the rear of the vehicle. A vehicle owner generally pays \$25 for the initial special license plate, and \$25 per year to renew the special license plate, with some statutory exceptions for certain special license plates. This rule does not impact or change the initial or renewal fees for the first special license plate, but only deals with a motor vehicle owner who opts to receive a duplicate special license plate for the front of the owner's vehicle or for other display. The rule limits the owner's cost to a one-time fee of \$10 to obtain a duplicate special license plate. Existing statute also allows the Department to charge for mailing costs, which adds \$5.53 to the total cost of a full-size special license plate or \$4.80 for a smaller license plate for a motorcycle or a small trailer.

A vehicle owner who has permanent physical disabilities may request disabled special license plates. For those vehicles that have a wheelchair carrier or wheelchair lift with a wheelchair attached to the vehicle, the vehicle owner is required by law to have a license plate on the rear of the vehicle and a license plate on the wheelchair carrier or lift to ensure the license plate is visible. Vehicle owners who attach a wheelchair carrier or lift to their vehicles after the rule's effective date will be subject to the duplicate special plate fee.

**6. Statement of the probable effect on state revenues:**

Revenue generated from duplicate special license plates is deposited in the Highway User Revenue Fund (HURF), which can only be used for state transportation infrastructure purposes. The Department does not

have an estimate of the number of duplicate special license plates that will be requested after the fee is implemented. The rule has no impact on the state general fund.

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

See 5(c)

ADOT routinely chooses the rulemaking option that is the least costly and burdensome to the business sector.

**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

#### **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.

#### **28-2151. Registration by mail; postage fund**

A. The director may establish a procedure for mailing registration applications and license plates or license tabs to applicants.

B. For purposes of paying postage incurred under this section, the director may establish a postage fund and charge the estimated costs incurred under this section for transmitting renewal notices to applicants. The director may transfer monies in the director's postage fund annually and use the monies as provided in section 28-6993, subsection C.

#### **28-2351. License plate provided; design**

A. Notwithstanding any other law, the department shall provide to every owner one license plate for each vehicle registered. At the request of the owner and on payment of a fee in an amount prescribed by the director by rule, the department shall provide one additional license plate for a vehicle for which a special plate is requested pursuant to this chapter.

B. The license plate shall display the number assigned to the vehicle and to the owner of the vehicle and the name of this state, which may be abbreviated. The director shall coat the license plate with a reflective material that is consistent with the determination of the department regarding the color and design of license plates and special plates. The director shall design the license plate and the letters and numerals on the license plate to be of sufficient size to be plainly readable during daylight from a distance of one hundred feet. In addition to the standard license plate issued for a trailer before August 12, 2005, the director shall issue a license plate for trailers that has a design that is similar to the standard size license plate for trailers but that is the same size as the license plate for motorcycles. The trailer owner shall notify the department which size license plate the owner wants for the trailer.

C. Notwithstanding any other law, the department shall not contract with a nongovernmental entity to purchase or secure reflective material for the plates issued by the department unless the department has made a reasonable effort to secure qualified bids or proposals from as many individual responsible respondents as possible.

D. The department shall determine the color and design of the license plate. All other plates issued by the department, except the plates issued pursuant to sections 28-2404, 28-2412, 28-2413, 28-2414, 28-2416, 28-2416.01, 28-2417 through 28-2462, 28-2472, 28-2473, 28-2474, 28-2475 and 28-4533 and article 14 of this chapter, shall be the same color as and similar in design to the license plate as determined by the department.

E. A passenger motor vehicle that is rented without a driver shall receive the same type of license plate as is issued for a private passenger motor vehicle.

#### **28-2401. Definitions**

In this article, unless the context otherwise requires:

1. "Immediate family member" means a spouse or a parent, child, brother or sister whether by adoption or blood.
2. "Special plates" means plates issued pursuant to this article.

#### **28-2403. Special plates; transfers; violation; classification**

A. Except as otherwise provided in this article, the department shall issue or renew special plates in lieu of the regular license plates pursuant to the following conditions and procedures and only if the requirements prescribed by this article for the requested special plates are met:

1. Except as provided in sections 28-2416 and 28-2416.01, a person who is the registered owner of a vehicle registered with the department or who applies for an original or renewal registration of a vehicle may submit to the department a completed application form as prescribed by the department with the fee prescribed by section 28-2402 for special plates in addition to the registration fee prescribed by section 28-2003.

2. Except for plates issued pursuant to sections 28-2404, 28-2412, 28-2413, 28-2414, 28-2416, 28-2416.01, 28-2417 through 28-2462, 28-2472, 28-2473, 28-2474 and 28-2475 and article 14 of this chapter, the special plates shall be the same color as and similar to the design of the regular license plates that is determined by the department.

3. Except as provided in section 28-2416, the department shall issue special plates only to the owner or lessee of a vehicle that is currently registered, including any vehicle that has a declared gross weight, as defined in section 28-5431, of twenty-six thousand pounds or less.

4. Except as provided in sections 28-2416 and 28-2416.01, the department shall charge the fee prescribed by section 28-2402 for each annual renewal of special plates in addition to the registration fee prescribed by section 28-2003.

B. Except as provided in sections 28-2416 and 28-2416.01, on notification to the department and on payment of the transfer fee prescribed by section 28-2402, a person who is issued special plates may transfer the special plates to another vehicle the person owns or leases. Persons who are issued special plates for hearing impaired persons pursuant to section 28-2408 and international symbol of access special plates pursuant to section 28-2409 are exempt from the transfer fee. If a person who is issued special plates sells, trades or otherwise releases ownership of the vehicle on which the plates have been displayed, the person shall immediately report the transfer of the plates to the department or the person shall surrender the plates to the department as prescribed by the director. It is unlawful for a person to whom the plates have been issued to knowingly permit them to be displayed on a vehicle except the vehicle authorized by the department.

C. The special plates shall be affixed to the vehicle for which registration is sought in lieu of the regular license plates.

D. A person is guilty of a class 3 misdemeanor who:

1. Violates subsection B of this section.

2. Fraudulently gives false or fictitious information in the application for or renewal of special plates or placards issued pursuant to this article.

3. Conceals a material fact or otherwise commits fraud in the application for or renewal of special plates or placards issued pursuant to this article.

R17-1-204. MVD Postage Fund: Registration by Mail Charges

A. For purposes of A.R.S. § 28-2151, the Division establishes a registration by mail postage fund.

B. The Division shall charge a registration by mail applicant current applicable U.S. Postal Service postage rates for mailing:

1. A registration by mail renewal notice.

2. A license plate, or

3. A registration tab.

June 13, 2018

Mr. Matt Clark  
Transportation Policy Advisor  
Office of the Governor  
1700 W. Washington, 8<sup>th</sup> Floor  
Phoenix, Arizona 85007

Dear Mr. Clark:

The Arizona Department of Transportation requests authorization for an exemption from Executive Order 2018-02, to proceed with formal rulemaking to adopt rules to comply with the license plate provisions in Chapter 279, Laws 2018, §§ 3 to 8 (SB 1524). These provisions require the Director to establish by rule, a fee for a customer who requests an additional special license plate for a vehicle. The Department will establish the fee for an additional special license plate by regular rulemaking.

The rulemaking will ensure:

- Statutory changes are incorporated into the current rules.
- Department compliance with state laws.
- Consistent application of the changes by the Department.
- Public understanding of the rule changes.

Thank you for your consideration of this request. If you have any questions, please contact me at (602) 712-7227.

Sincerely,



John S. Halikowski  
ADOT Director

## **Request for Rulemaking Exemption**

The Arizona Department of Transportation requests an exemption from the rulemaking moratorium to adopt rules to implement statutory changes in SB 1524 (Chapter 279, Laws 2018, §§ 3-8 - Budget procedures; budget reconciliation; 2018-19). ADOT will use the regular rulemaking process to establish a fee in the Department's rules for a duplicate license plate as required by A.R.S. § 28-2351(A), and make any necessary conforming rule changes relating to license plates.

### **Background**

The changes contained SB 1524 require the Department to provide every vehicle owner with one license plate for each vehicle registered. A vehicle owner may request one additional license plate for a vehicle for which the owner requests a special license plate, on payment of a fee as established by the Department.

The Department estimates that the average manufacturing cost of a duplicate special license plate is \$3.50. The Department anticipates setting the cost for a duplicate special license plate at \$10.00. The Department has authority to collect postage costs, which are currently \$4.89 for a full-size license plate, so the total cost for one duplicate license plate, including postage, is expected to be \$14.89. The duplicate license fees will be deposited in the Highway User Revenue Fund (HURF), which will be used for transportation infrastructure purposes. The Department anticipates that following approval of the rule, the Department will be ready to implement the fee in 2019.

### **Reasoning for seeking the rule exemption**

The Department is requesting this exemption from the rulemaking moratorium to establish a fee by regular rulemaking for a vehicle owner with a special plate who requests a duplicate special license plate.

### **Justification for the rule exemption**

The Department's justification for this request is: 1) To comply with a state statutory requirement to establish a fee in rule for a duplicate special license plate; and 2) To fulfill an obligation related to fees or action necessary to implement the state budget. Approval of this exemption ensures the Department's compliance with this legislation, provides additional transportation infrastructure revenue, serves customers who desire a duplicate special license plate, and allows the Department to recoup the manufacturing costs for the duplicate special license plate. If the rulemaking request is not approved, the Department will not be in compliance with statute and will not be able to recoup the funding reduction.

**Jane McVay**

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**From:** Stacy Guillen  
**Sent:** Thursday, June 14, 2018 2:43 PM  
**To:** Jane McVay  
**Subject:** FW: Moratorium Exemption - Fee for Duplicate Special License Plate

**From:** Matt Clark [<mailto:mclark@az.gov>]  
**Sent:** Thursday, June 14, 2018 2:17 PM  
**To:** Stacy Guillen  
**Subject:** Re: Moratorium Exemption - Fee for Duplicate Special License Plate

Stacey,

After discuss the proposal with you and reviewing teh statute, I approve your request.

Thanks,  
Matt

Matthew Clark  
Policy Advisor on Transportation and Municipal Government  
Governor Doug Ducey  
O: 602-542-1256  
[mclark@az.gov](mailto:mclark@az.gov)



On Thu, Jun 14, 2018 at 2:06 PM, Stacy Guillen <[SGuillen@azdot.gov](mailto:SGuillen@azdot.gov)> wrote:

Matt,

Please find the attached Rulemaking Moratorium Exemption Request signed by Director Halikowski for the purpose of implementing SB 1524, specifically setting the duplicate plate fee.

Please feel free to contact me at any time if you have questions or concerns.

Thank you,

Stacy

**Stacy Guillen**

Chief, External Affairs & Policy Development

Government Relations

206 S. 17<sup>th</sup> Ave, Room 192, MD 140A

Phoenix, AZ 85007

602.712.7679, Office

[SGuillen@azdot.gov](mailto:SGuillen@azdot.gov)



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**DEPARTMENT OF TRANSPORTATION**

Title 17, Chapter 4, Article 1, General Provisions; Article 4, Driver License



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 30, 2019

**SUBJECT: ARIZONA DEPARTMENT OF TRANSPORTATION**  
Title 17, Chapter 4, Article 1, General Provisions; Article 4, Driver Licenses

**New Article:** Article 1

**New Section:** R17-4-101

**Repeal:** R17-4-407

**New Section:** R17-4-407

**Amend:** R17-4-409

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This rulemaking from the Arizona Department of Transportation ("Department") seeks to codify rules previously made by exempt rulemaking at 22 A.A.R. 819, April 15, 2016, on initial implementation of Laws 2015, Ch. 294 (HB2609). The exempt rules allowed the Department to collect a \$25 application fee when processing an original, reinstatement, or renewal application for a travel-compliant driver license or an original or renewal application for a travel-compliant identification license. The \$25 fee must be reestablished by regular rulemaking pursuant to A.R.S. § 41-1008.

Effective October 1, 2020, the travel-compliant driver license or identification license is the only Arizona credential that federal authorities will accept as proof of identity for an "official

purpose” as defined by the U.S. Department of Homeland Security under 6 CFR 37, which includes accessing a federal facility, boarding a federally-regulated commercial aircraft, or entering a nuclear power plant. The Department indicates that this rulemaking ensures that the Department remains in full compliance with the requirements of federal laws and regulations regarding secure credential issuance. The Department indicates that if it were unable to continue issuing these credentials, a great number of Arizona residents would risk losing access to all areas secured under the jurisdiction of the federal government beginning October 1, 2020.

In addition, through this rulemaking, the Department seeks to provide additional clarification on the processes used by applicants who seek a federally recognized travel-compliant driver license or travel-compliant identification license under R17-4-407. Furthermore, the Department also seeks to preserve and clarify the application process and fee currently in effect for the standard-issue non-operating identification license provided under R17-4-409.

The Governor’s office granted an exception from the rulemaking moratorium to the Department for this rulemaking on February 15, 2017.

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

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

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

The exempt rules made in April 2016 allowed the Department to collect a \$25 application fee when processing an original, reinstatement, or renewal application for a travel-compliant driver license or an original or renewal application for a travel-compliant identification license. Pursuant to A.R.S. § 41-1008(E), “a fee that is established or increased by exempt rule making...is effective for two years unless an extension is granted by the [C]ouncil.” Pursuant to A.R.S. § 41-1008(F), “after the expiration of the applicable period under subsection E of this section, the agency shall not charge or receive the fee unless the agency has complied with the rule making requirements of this chapter to establish or increase the fee.” As such, these rules seek to reestablish the \$25 application fee previously established through exempt rulemaking.

Pursuant to A.R.S. § 41-1008(A), an agency shall not “charge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute...” or “make a rule establishing a fee that is solely based on a statute that generally authorizes an agency to recover its costs or to accept gifts or donations.”

Pursuant to A.R.S. § 28-3175(A), “if a driver license applicant or nonoperating identification license applicant requests a driver license or nonoperating identification license that allows the applicant to board a federally regulated commercial aircraft or to access restricted areas in federal facilities, nuclear power plants, or military facilities, the department must issue the applicant the driver license or nonoperating identification license.” Pursuant to A.R.S. §

28-3002(A)(14) the fee required for “a driver license or nonoperating identification license issued pursuant to section 28-3175” is “an amount to be determined by the director.” Pursuant to A.R.S. § 28-366(1), “[t]he director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for collection of taxes and license fees.” Additionally, pursuant to A.R.S. § 28-3175(C), “[t]he department shall adopt rules to implement this section.”

As such, it appears the fee for issuing a travel-compliant driver license or nonoperating identification license is expressly authorized by statute and rule establishing the \$25 fee complies with A.R.S. § 41-1008(A).

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

The Department engages in this rulemaking to permanently codify a \$25 application fee for issuance of an Arizona driver license or identification license deemed by the US Department of Homeland Security (DHS) as issued in compliance with the federal Real ID Act of 2005, Public Law 109-13, 119 Statute 302. The Department indicates that any costs required for compliance with this rulemaking would be the result of both federal and state legislation and not necessarily a result of this rulemaking.

The Department records indicate that less than four percent of Arizona’s 5,217,607 credential holders have requested a federally-recognized travel-compliant credential. As of March 1, 2019, the Department has issued 199,373 travel-compliant driver licenses, and 6,082 travel-compliant identification licenses, for a total of 205,455 secure credentials.

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

The Department states that it routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. The Department indicates that travel-compliant credentials are completely voluntary, so no individual is compelled to request a travel-compliant credential.

**5. What are the economic impacts on stakeholders?**

Stakeholders are the Department and Arizona driver license or non-operating identification license applicants who requested issuance of a secure credential that can be accepted by federal agencies as proof of identity. The Department has incurred the costs to ensure that all Department systems are in place to bring Arizona into full compliance with federal regulations regarding the state-issuance of secure credentials that can be accepted by federal agencies as proof of a person’s identity for official purposes on or before October 1, 2020.

Since a person seeking application and issuance of a travel-compliant credential under these rules does so voluntarily, the Department anticipates no significant economic impact to private individuals or business entities as a result of this rulemaking. The Department anticipates

that both the public and businesses will appreciate the higher level of confidence they can all enjoy knowing that, if presented a secure travel-compliant credential issued under these rules, the credential holder's identity was appropriately verified by the Department before issuance.

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

The Department indicates that it did not receive any written or oral comments regarding this rulemaking.

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

No. The final rules are not a substantial change, considered as a whole, from the proposed rules. The Department indicates only minor grammatical and technical corrections were made at the request of Council staff.

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

These rules reference the federal regulations established by the U.S. Department of Homeland Security under 6 CFR 37, in conformance with the federal REAL ID Act of 2005. Since the federal regulations clearly outline all documentation necessary for a person to establish identity and date of birth on application for a federally-acceptable secure REAL ID-compliant driver or identification license, these rules are not more stringent than the applicable federal law.

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

The rules relate to the issuance of a federally-recognized travel-compliant driver license or identification license issued by the Department. This license is considered a general permit as defined by A.R.S. § 41-1001(11) which means "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing." As such, the Department complies with A.R.S. § 41-1037(A).

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

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

## **11. Conclusion**

Council staff finds the rules are written in a manner that is clear, concise, and understandable to the general public.

The Department has proposed an immediate effective date for these rules pursuant to A.R.S. § 41-1032(A)(1) and (4), asserting that an immediate effective date is necessary “[t]o preserve the public peace, health or safety” and “[t]o provide a benefit to the public and a penalty is not associated with a violation of the rule.” Specifically, the Department indicates that this rulemaking will support the Department’s ability to preserve and maintain the public peace, health, and safety by ensuring that the Department is able to continue offering all applicants for an Arizona driver license or non-operating identification license an uninterrupted opportunity to request issuance of a federally-recognized, travel-compliant driver license or identification license. Also, the Department has determined that these rules provide a significant public benefit, since the rules contain provisions for issuing federally-recognized secure credentials to qualified applicants, no penalty is associated with a violation of the rules, and application to the Department for either of the credentials is completely voluntary.

Council staff recommends approval of this rulemaking.



Director's Office

*An Arizona Management System Agency*

Douglas A. Ducey, Governor

John S. Halikowski, Director

Scott Omer, Deputy Director/Chief Operating Officer

Kevin Blesty, Deputy Director for Policy

Dallas Hammit, Deputy Director for Transportation

May 21, 2019

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

Re: ADOT Submission of Final Rule Amendments to R17-4-101, R17-4-407, and R17-4-409  
regarding Travel-compliant Credentials

Dear Ms. Sornsin:

The Arizona Department of Transportation submits for Council review and approval the accompanying Notice of Final Rulemaking for inclusion on the Council's July 2019 agenda. The Department certifies that the attached documents meet the requirements prescribed under A.R.S. § 41-1052 and A.A.C. R1-6-201. The following information is provided:

- a. The rulemaking record closed on April 18, 2019, with no comments received;
- b. The rulemaking does not relate to a 5-year review report;
- c. The rulemaking permanently establishes a new \$25 fee previously made by exempt rulemaking as authorized under A.R.S. § 28-3175;
- d. The rulemaking does not increase any existing fees;
- e. An immediate effective date is requested under A.R.S. § 41-1032;
- f. The preamble discloses a reference to all studies relevant to the rules that the agency reviewed and either did or did not rely on in its evaluation of or justification for the rules;
- g. No new full-time employees are necessary to implement and enforce the rules;
- h. The licenses provided under these rules are considered general permits, as required under A.R.S. § 41-1037 and defined under A.R.S. § 41-1001, since the facilities, activities, and practices afforded to the holders of each license class or type are substantially similar in nature for all holders of each license class or type, whether standard-issue or travel-compliant;
- i. The rulemaking contains no incorporations by reference and the rules are not more stringent than federal law;
- j. No persons submitted an analysis to the agency that compares the rule's impact of the competitiveness in this state to the impact on businesses in other states; and

k. Items included in this final rule package are as follows:

Signed cover letter;

Signed agency certificate;

Notice of Final Rulemaking;

Economic, Small Business, and Consumer Impact Statement;

General authorizing statutes; and

Implementing statutes.

For information regarding this submission, please communicate directly with John Lindley, Senior Rules Analyst, at (602) 712-8804.

Sincerely,



John S. Halikowski

Director

Enclosures

**AGENCY CERTIFICATE**

**NOTICE OF FINAL RULEMAKING**

- 1. Agency name:** Arizona Department of Transportation
- 2. Chapter heading:** 4, Department of Transportation – Title, Registration, and Driver Licenses
- 3. Code citation for the Chapter:** 17 A.A.C. 4
- 4. The Articles and the Sections involved in the rulemaking, listed in numerical order:**

<u>Article or Section Affected</u>	<u>Rulemaking Action</u>
Article 1	New Article
R17-4-101	New Section
R17-4-407	Repeal
R17-4-407	New Section
R17-4-409	Amend

- 5. The rules contained in this package are true and correct as made:**

6.   
Signature of Agency Chief Executive Officer

5/14/2019  
Date signed

John S. Halikowski  
\_\_\_\_\_  
Printed or typed name of signer

Director  
\_\_\_\_\_  
Title of signer

**AGENCY RECEIPT**  
**NOTICE OF FINAL RULEMAKING**

1. **Agency name:** Arizona Department of Transportation
2. **The Articles and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

<b><u>Articles or Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
Article 1	New Article
R17-4-101	New Section
R17-4-407	Repeal
R17-4-407	New Section
R17-4-409	Amend

**AGENCY RECEIPT  
NOTICE OF FINAL RULEMAKING**

**1. Agency name:** Arizona Department of Transportation

**2. The Articles and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

<b><u>Articles or Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
Article 1	New Article
R17-4-101	New Section
R17-4-407	Repeal
R17-4-407	New Section
R17-4-409	Amend

**NOTICE OF FINAL RULEMAKING**  
**TITLE 17. TRANSPORTATION**  
**CHAPTER 4. DEPARTMENT OF TRANSPORTATION**  
**TITLE, REGISTRATION, AND DRIVER LICENSES**

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
Article 1	New Article
R17-4-101	New Section
R17-4-407	Repeal
R17-4-407	New Section
R17-4-409	Amend

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

Authorizing statutes: A.R.S. §§ 28-366, 28-3002, 28-3165, and 28-3175

Implementing statutes: A.R.S. §§ 28-3151, 28-3158, 28-3159, 28-3170, 28-3171, 28-3173, 28-6991, 28-6993, 41-1080, and 6 CFR 37

**3. The effective date of the rule:**

Effective immediately on filing with the Office of the Secretary of State, as authorized under A.R.S. § 41-1032(A)(1).

**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):**

The Department has selected an immediate effective date for these rules as authorized under A.R.S. § 41-1032(A)(4). In direct support of the Department's ability to preserve and maintain the public peace, health, and safety, this rulemaking ensures that the Department is able to continue offering all applicants for an Arizona driver license or non-operating identification license an uninterrupted opportunity to request issuance of a travel-compliant driver license or identification license that is federally-recognized as a secure credential and can be accepted by federal authorities as proof of identity for any official purpose defined under 6 CFR 37, which includes accessing a federal facility, boarding a federally-regulated commercial aircraft, or entering a nuclear power plant. On and after October 1, 2020, the credentials referenced in these rules will be the only Arizona credentials that federal authorities can accept as proof of a person's identity, in lieu of requiring that each person carry a passport or other federally-approved form of identification.

The Department has determined that these rules provide a significant public benefit, since the rules contain provisions for issuing federally-recognized secure credentials to qualified applicants, no

penalty is associated with a violation of the rules, and application to the Department for either of the credentials is completely voluntary. However, Department records indicate that less than 4% of Arizona's current credential holders have requested a travel-compliant credential, which may be a strong indication that the Department's Motor Vehicle Division field offices will soon experience a wave of applicants seeking expeditious issuance of the new travel-compliant credentials ahead of the looming deadline imposed by the U.S. Department of Homeland Security (DHS). The Department has already begun an extensive effort to promote early application and issuance of these travel-compliant credentials so that all Arizona driver license and non-operating identification license holders are well-aware of the approaching federal deadline and the benefit of convenience these new credentials can provide.

**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: 25 A.A.R. 679, March 15, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 670, March 15, 2019

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

Name: John Lindley, Senior Rules Analyst  
Address: Arizona Department of Transportation  
Rules and Policy Development Office of the Director  
206 S. 17th Ave., Mail Drop 180A  
Phoenix, AZ 85007  
Telephone: (602) 712-8804  
E-mail: jlindley@azdot.gov  
Web site: Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at [www.azdot.gov/about/GovernmentRelations](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 Arizona Department of Transportation engages in this rulemaking to permanently codify rules previously made by exempt rulemaking at 22 A.A.R. 819, April 15, 2016, on initial implementation of Laws 2015, Ch. 294 (HB2609). The exempt rules made by the Department, after first providing public notice and at least thirty days for public comments, allowed the Department to collect a \$25 application fee when processing an original, reinstatement, or renewal application for a travel-compliant driver license or an original or renewal application for a travel-compliant identification license. Since A.R.S. § 28-3175 now requires the Department to issue a travel-compliant credential on request, the \$25 fee must be reestablished

by regular rulemaking as required under A.R.S. § 41-1008.

Because of the Department's ability to issue these federally-recognized travel-compliant driver licenses and identification licenses, DHS has deemed that Arizona is in full compliance with the REAL ID Act of 2005, and will therefore continue to accept all current standard-issue Arizona driver licenses and identification licenses at airport security and restricted federal facilities until October 1, 2020, even if the license is marked "Not for Federal Identification."

Effective October 1, 2020, the travel-compliant driver license or identification license is the only Arizona credential that federal authorities will accept as proof of identity for an official purpose defined by DHS under 6 CFR 37, which includes accessing a federal facility, boarding a federally-regulated commercial aircraft, or entering a nuclear power plant. This rulemaking ensures that the Department remains in full compliance with the requirements of federal laws and regulations regarding secure credential issuance. If the Department were unable to continue issuing these credentials, a great number of Arizona residents would risk losing access to all areas secured under the jurisdiction of the federal government beginning October 1, 2020.

While providing additional clarification on the processes used by applicants who seek a federally-recognized travel-compliant driver license or travel-compliant identification license under R17-4-407, the Department has also used this rulemaking opportunity to preserve and clarify the application process and fee currently in effect for the standard-issue non-operating identification license provided under R17-4-409.

**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 agency did not review or rely on any study for this rulemaking.

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

Not applicable

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

The Department engages in this rulemaking, as required under A.R.S. § 41-1008(E), to permanently codify a \$25 application fee the Department initially established by exempt rulemaking at 22 A.A.R. 819, April 15, 2016, for issuance of an Arizona driver license or identification license that can be accepted by all federal agencies as a secure credential issued by the Department in full compliance with the federal Real ID Act of 2005, Public Law 109-13, 119 Stat. 302.

Since the travel-compliant credentials issued by the Department under A.R.S. § 28-3175 and R17-4-407 were deemed by DHS to be issued in full compliance with the federal requirements of the REAL ID Act of 2005, DHS has agreed to continue accepting all existing standard-issue Arizona credentials at airport security and restricted federal facilities until October 1, 2020, at which point only the federally-recognized Arizona travel-compliant credentials will be accepted.

The Department believes that the federally recognized travel-compliant credentials will become the preferred credentials for securing access to restricted federal facilities and conducting domestic travel through international airports, in lieu of having to carry a passport or other qualifying documents. Additionally, the \$25 fee for a federally-recognized travel-compliant Arizona driver license or identification license is nominal and provides the most cost effective way to expedite domestic travel for Arizona residents who prefer to apply for this new secure credential instead of having to apply for or renew a U.S. passport, which may cost more than \$110.

The Department anticipates that these rules will have a minimal economic impact on small businesses and consumers as follows:

Small businesses that routinely reimburse employees for costs associated with obtaining or maintaining a valid Arizona driver license or non-operating identification license may experience a minimal increase in operational costs if the employees require secure travel-compliant credentials. The application fee collected by the Department is \$25 when processing an original, reinstatement, or renewal application for any travel-compliant driver license class or an original or renewal application for a travel-compliant identification license, regardless of the application type (e.g. upgrade, downgrade, etc.). However, on application for a standard-issue Arizona driver license the Department will continue to collect the age-appropriate fees provided under A.R.S. § 28-3002, and the \$12 fee as provided under A.R.S. § 28-3165 and R17-4-409 for a standard-issue Arizona non-operating identification license.

The transportation industry and consumers may experience a significant, but unquantifiable, benefit over the long term in the added ease of access and freedom of movement each holder of a travel-compliant driver license or identification license should achieve by not having to waste valuable time waiting in lines to be cleared for access by DHS when conducting business with federal authorities, accessing federal facilities, boarding federally-regulated commercial aircraft, or entering secured areas like nuclear power plants.

Prior to May 2018, the Department processed between 3,000 and 4,000 applications for the new secure travel-compliant credentials each month. However, after reaching-out by email to more than 1.6 million existing Arizona driver license and non-operating identification license holders urging them to consider converting to a secure travel-compliant credential, the Department has begun processing up to 10,000 of these credentials each month.

Department records indicate that less than four percent of Arizona's current credential holders have requested a federally-recognized travel-compliant credential. As of March 1, 2019, the Department has issued 199,373 travel-compliant driver licenses, and 6,082 travel-compliant identification licenses, for a total of 205,455 secure credentials as follows:

License Class or Type:	Total Currently Issued Credentials	Standard-issue	Percentage of Total Currently Issued Credentials	Travel-compliant	Percentage of Total Currently Issued Credentials
Non-commercial Driver	5,217,607	5,025,204	96.31%	192,403	3.69%
Commercial Driver	108,716	101,746	93.59%	6,970	6.41%
Non-operating Identification	1,078,924	1,072,842	99.44%	6,082	.56%
<b>Averaging:</b>	<b>6,405,247</b>	<b>6,199,792</b>	<b>96.45%</b>	<b>205,455</b>	<b>3.55%</b>

If the Department were unable to continue issuing these secure travel-compliant credentials, a great number of Arizona residents would risk losing their ability to board a federally-regulated commercial aircraft or to gain access to restricted areas in federal facilities, such as nuclear power plants and military facilities beginning October 1, 2020, unless a valid passport or other federally-approved identification is provided.

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

Minor grammatical and technical corrections were made at the request of the Governor’s Regulatory Review Council staff.

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

The Department received no public or stakeholder comments regarding this rulemaking.

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

The federal REAL ID Act of 2005 requires that all states meet higher federal security standards for the production and design, application, and issuance of state driver licenses and identification licenses that can be accepted by federal agencies for official purposes, including but not limited to boarding a federally-regulated commercial aircraft or accessing restricted areas in federal facilities, nuclear power plants, or military facilities. Although A.R.S. §§ 28-336 and 28-338 expressly prohibit the Department from fully implementing the federal REAL ID Act of 2005, Laws 2015, Ch. 294, expressly provided that the Department shall issue a federally-recognized driver license or identification license if voluntarily requested by an applicant.

Arizona law requires that any applicant for a driver license, instruction permit, or non-operating identification license provide to the Department satisfactory proof of the applicant’s full legal name, date of birth, sex and domicile residence address in this state, if the applicant has a residence address, and that the applicant’s presence in the United States is authorized under federal law as prescribed under A.R.S. § 41-1080. The Department maintains on its website at [www.azdot.gov](http://www.azdot.gov), a comprehensive list of all documents

that can be accepted as satisfactory proof of all information required for obtaining a state-issued driver license or non-operating identification license.

As provided under A.R.S. § 28-3175, Arizona's federally-recognized travel-compliant driver licenses and identification licenses are valid for a period of up to eight years and do not contain radio frequency identification technology.

**a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Although federal law subjects the Department and the applicant to more stringent security and issuance requirements, a federally-recognized travel-compliant driver license or identification license issued by the Department under these rules is considered a general permit, as required under A.R.S. § 41-1037 and defined under A.R.S. § 41-1001, since the facilities, activities, and practices afforded to the holders of each license class or type are substantially similar in nature for all holders of each license class or type, whether standard-issue or travel-compliant.

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

These rules reference the federal regulations established by the U.S. Department of Homeland Security under 6 CFR 37, in conformance with the federal REAL ID Act of 2005, which now requires that all states shall:

Meet more stringent federal security standards for the production and design, application, and issuance of driver and identification licenses that federal government agencies can accept for official purposes, including boarding a federally-regulated commercial aircraft or accessing restricted areas in federal facilities, nuclear power plants, or military facilities;

Follow the federally-prescribed minimum application, documentation, verification, and card issuance requirements each time a person requests issuance of a secure REAL ID-compliant driver or identification license; and

Ensure that the face and the machine readable zone of each standard-issue driver license or non-operating identification license issued by the state clearly indicates that the credential is not acceptable by the federal government for identification or other official purposes.

Additionally, since the federal regulations clearly outline all documentation necessary for a person to establish identity and date of birth on application for a federally-acceptable secure REAL ID-compliant driver or identification license, these rules are not more stringent than the applicable federal law.

**c. Whether a person submitted an analysis to the agency regarding the rule's impact of the competitiveness of businesses in this state as compared to the competitiveness of businesses 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:**

The rules were not previously made, amended, repealed or renumbered as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**  
**CHAPTER 4. DEPARTMENT OF TRANSPORTATION**  
**TITLE, REGISTRATION, AND DRIVER LICENSES**

**ARTICLE 1. RESERVED GENERAL PROVISIONS**

Section

R17-4-101.    Definitions

**ARTICLE 4. DRIVER LICENSES**

Section

R17-4-407.    ~~Application for Travel Compliant Driver License or Nonoperating Identification License; Fee~~  
Travel-compliant Driver License or Travel-compliant Non-operating Identification License  
Application; Fee

R17-4-409.    ~~Application for Nonoperating~~ Non-operating Identification License Application; Applicability; Fee

## **ARTICLE 1. ~~RESERVED~~ GENERAL PROVISIONS**

### **R17-4-101. Definitions**

In addition to the definitions prescribed under A.R.S. § 28-101, A.R.S. § 28-3001, and 6 CFR 37.3, the following terms apply to this Chapter, unless otherwise specified:

“Non-operating identification license” means a credential issued by the Department for identification purposes only, as prescribed under A.R.S. § 28-3165, which does not grant authority to operate a motor vehicle and is not intended to be accepted by federal agencies for an *official purpose* defined under 6 CFR 37.3.

“Travel-compliant driver license” has the same meaning as the term *REAL ID Driver’s License* defined under 6 CFR 37.3, which is a driver license issued by the Department as prescribed under A.R.S. § 28-3175 in compliance with A.R.S. Title 28, Chapter 8, and the federal standards provided under 6 CFR 37 for state issuance of secure credentials intended to be accepted by federal agencies for official purposes.

“Travel-compliant identification license” has the same meaning as the term *REAL ID Identification Card* as defined under 6 CFR 37.3, which is a non-operating identification license issued by the Department as prescribed under A.R.S. § 28-3175 in compliance with A.R.S. Title 28, Chapter 8, and the federal standards provided under 6 CFR 37 for state issuance of secure credentials acceptable by federal agencies for official purposes.

## ARTICLE 4. DRIVER LICENSES

### **R17-4-407. ~~Application for Travel-Compliant Driver License or Nonoperating Identification License; Fee~~ Travel-compliant Driver License or Travel-compliant Non-operating Identification License Application; Fee**

**A.** For the purposes of this Section:

1. ~~“Travel-compliant driver license” means a federally compliant driver license issued pursuant to A.R.S. § 28-3175.~~
2. ~~“Travel-compliant nonoperating identification license” means a federally compliant nonoperating identification license issued pursuant to A.R.S. § 28-3175.~~

**B.** ~~An applicant shall apply to the Department, on a form provided by the Department, for a travel-compliant driver license or a travel-compliant nonoperating identification license.~~

**C.** ~~An applicant must meet and comply with all lawful requirements for an Arizona driver license or nonoperating identification license.~~

**D.** ~~An applicant shall meet and comply with all application and documentation requirements in the most current edition of 6 CFR 37, including satisfactory proof of identity, date of birth, social security number, principle residency, and evidence of lawful status in the United States. Documents and information must be verified by the Department. An applicant may obtain a listing of acceptable documentation from the Department’s website at [www.azdot.gov](http://www.azdot.gov).~~

**E.** ~~An applicant shall pay a \$25 fee for any class of a travel-compliant driver license or travel-compliant nonoperating identification license.~~

**F.** ~~A travel-compliant driver license is valid for a period of eight years after issuance and is renewable for successive periods of eight years up to but not exceed the year of the licensee’s 65th birthday, except for when:~~

1. ~~The applicant is authorized for a shorter period of time as provided under A.R.S. § 13-3821, 28-3171(B), or 28-3223, or federal law authorizes the applicant’s presence for a shorter period of time.~~
2. ~~The applicant is 60 years of age or older and the travel-compliant driver license is valid for a period of five years after issuance and renewable for successive periods of five years.~~

**G.** ~~A travel-compliant nonoperating identification license is valid for a period of eight years after issuance and is renewable for successive periods of eight years, except for when the applicant is authorized for a shorter period of time as provided under A.R.S. § 13-3821, 28-3171(B), or 28-3223, or federal law authorizes the applicant’s presence for a shorter period of time.~~

**A.** A person seeking a travel-compliant driver license or travel-compliant identification license shall meet and comply with all:

1. State laws and rules applicable to every applicant who seeks issuance of any other driver license class, type, endorsement or non-operating identification license issued by the Department; and
2. Federal laws and regulations regarding the application and minimum documentation, verification, and card issuance requirements prescribed in the most recent edition of 6 CFR 37.11 for establishing satisfactory

proof of a person's identity, date of birth, social security number, principal residence address of domicile in this state, and lawful status in the United States.

- B.** A person seeking a travel-compliant driver license or travel-compliant identification license shall:
1. Apply to the Department using an application form provided by the Department; and
  2. Submit to the Department for authentication, satisfactory proof of the applicant's full legal name, date of birth, sex, social security number, principal residence address of domicile in this state, and that the applicant's presence in the United States is authorized under federal law. A list of all source documents the Department may accept as satisfactory proof under state and federal law is maintained by the Department on its website at [www.azdot.gov](http://www.azdot.gov).
- C.** An applicant for a travel-compliant driver license or travel-compliant identification license shall submit to the Department a fee of \$25:
1. On original application, reinstatement, or renewal of any travel-compliant driver license class; or
  2. On original application or renewal of a travel-compliant identification license.
- D.** A travel-compliant driver license or travel-compliant identification license issued by the Department, as prescribed under A.R.S. § 28-3175 and this Section, is:
1. Valid for a period of up to eight years;
  2. Renewable for successive periods of up to eight years; and
  3. Subject to all state and federal laws or restrictions requiring the issuance of a shorter expiration period (e.g., up to age 65, as provided under A.R.S. § 28-3171, or for a time period equal to the applicant's authorized stay in the United States, as provided under 6 CFR 37.21, etc.).

**R17-4-409. Application for Nonoperating Non-operating Identification License Application; Applicability; Fee**

- ~~**A.** This Section does not apply to applicants for a travel-compliant nonoperating identification license. Except as provided under R17-4-407, this Section applies to applicants for a nonoperating identification license.~~
- ~~**B.** An applicant shall apply to the Department, on a form provided by the Department, for a nonoperating identification license, and shall comply with the requirements under A.R.S. § 28-3165.~~
- ~~**C.** An applicant may obtain a listing of satisfactory proof of an applicant's name and date of birth from the Department's website at [www.azdot.gov](http://www.azdot.gov).~~
- ~~**D.** Except as provided under A.R.S. § 28-3165, an applicant shall pay a \$12 fee for a nonoperating identification license.~~
- A.** A person seeking a non-operating identification license, issued by the Department as prescribed under A.R.S. § 28-3165 and this Section, shall apply to the Department using a form provided by the Department.
- B.** An applicant shall submit a \$12 fee to the Department, on application for a non-operating identification license, unless the applicant is provided a specific statutory exemption from payment of the fee.
- C.** An applicant shall provide to the Department, on application for a non-operating identification license, satisfactory proof of the applicant's full legal name, date of birth, sex, principal residence address of domicile in

this state, and evidence that the applicant's presence in the United States is authorized under federal law as listed by the Department on its website at [www.azdot.gov](http://www.azdot.gov).

- D.** A person seeking a travel-compliant identification license issued by the Department under A.R.S. § 28-3175, which is recognized by federal agencies as proof of identity for use when accessing federal facilities, boarding federally-regulated commercial aircraft, or entering nuclear power plants, shall apply to the Department as provided under R17-4-407.

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION**

**TITLE, REGISTRATION, AND DRIVER LICENSES**

**R17-4-101, R17-4-407, and R17-4-409**

**A. Economic, small business and consumer impact summary**

**1. Identification of the rulemaking:**

The Department engages in this rulemaking, as required under A.R.S. § 41-1008(E), to permanently codify a \$25 application fee initially established by the Department through exempt rulemaking at 22 A.A.R. 819, April 15, 2016, for issuance of an Arizona driver license or identification license deemed by the U.S. Department of Homeland Security (DHS) as issued in compliance with the federal Real ID Act of 2005, Public Law 109-13, 119 Stat. 302.

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

Although the federal REAL ID Act of 2005 did not mandate that all state licensing agencies issue secure driver licenses and non-operating identification licenses in full compliance with the federal regulations, the regulations do prohibit all federal agencies from accepting any state-issued driver license or non-operating identification license not issued in full compliance with the REAL ID Act of 2005, beginning October 1, 2020. This rulemaking will ensure that all Arizona driver license and non-operating identification license applicants have the option to request a credential that is issued by the Department in full compliance with all federal regulations regarding the state-issuance of secure credentials that can be accepted by federal agencies as proof of a person's identity for official purposes on and after October 1, 2020.

**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 the Department were unable to continue issuing these secure travel-compliant credentials, a great number of Arizona residents would risk losing their ability to board a federally-regulated commercial aircraft or to gain access to restricted areas in federal facilities, such as nuclear power plants and military facilities beginning October 1, 2020, unless a valid passport or other federally approved identification is shown.

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

Since the Department currently issues these travel-compliant credentials on request of the applicant, as provided under A.R.S. § 28-3175 and R17-4-407, the U.S. Department of Homeland Security (DHS) has deemed that Arizona is in full compliance with the federal requirements of the REAL ID Act of 2005, and has agreed to continue accepting all existing standard-issue Arizona credentials at airport security and restricted federal facilities until October 1, 2020, at which point only the federally-recognized

Arizona travel-compliant credentials can be accepted in lieu of having to provide a current passport or other federally recognized documents.

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

Effective October 1, 2020, all federal agencies are prohibited from accepting, as proof of a person's identity, any state-issued driver license or non-operating identification license unless that license was issued in full compliance with the federal REAL ID Act of 2005.

As provided under A.R.S. § 28-3175, all applicants for an Arizona driver license or non-operating identification license now have the option to request issuance of a REAL ID compliant credential that can be accepted by federal agencies as proof of identity on and after October 1, 2020.

Application for this new travel-compliant credential must be made to the Department in person and each applicant is required to present certain federally-acceptable documents to the Department for verification of identity prior to issuance of the new credential. The Department collects the \$25 application fee established under these rules when processing an original, reinstatement, or renewal application for any travel-compliant driver license class or an original or renewal application for a travel-compliant identification license, regardless of the application type (e.g. upgrade, downgrade, etc.).

Since a person seeking application and issuance of a travel-compliant credential under these rules does so voluntarily, as provided under A.R.S. 28-3175, the Department anticipates no significant economic impact to private persons or business entities as a result of this rulemaking. Other than the nominal \$25 application fee prescribed, this rulemaking neither requires, nor prohibits, any action on the part of any private person or consumer and imposes no direct or indirect costs except to the Department as detailed below.

**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: John Lindley, Senior Rules Analyst

Address: Arizona Department of Transportation

Rules and Policy Development Office of the Director

206 S. 17th Ave., Mail Drop 180A

Phoenix, AZ 85007

Telephone: (602) 712-8804

E-mail: [jlindley@azdot.gov](mailto:jlindley@azdot.gov)

Website: <https://www.azdot.gov/about/GovernmentRelations/contact-us>

**B. Economic, small business and consumer impact statement**

**1. Identification of the rulemaking:**

The Department engages in this rulemaking, as required under A.R.S. § 41-1008(E), to permanently codify a \$25 application fee the Department initially established by exempt rulemaking at 22 A.A.R. 819, April 15,

2016, for issuance of an Arizona driver license or identification license deemed by the U.S. Department of Homeland Security (DHS) as issued in compliance with the federal Real ID Act of 2005, Public Law 109-13, 119 Stat. 302.

As provided under Laws 2015, Chapter 294 (HB2609), specifically A.R.S. § 28-3175, the Department must issue to a driver license applicant or a non-operating identification license applicant on request, a driver license or non-operating identification license that can be accepted by federal agencies as proof of identity for official purposes as defined under 6 CFR 37, which may include boarding a federally regulated commercial aircraft or gaining access to restricted areas in federal facilities, nuclear power plants, or military facilities.

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

Under this rulemaking, the Department identifies the following entities that may bear costs and receive benefits that may range from minimal to substantial:

<b>Persons to bear costs</b>	<b>Persons to directly benefit</b>
ADOT	ADOT
Arizona driver license or non-operating identification license applicants who request issuance of a secure credential that can be accepted by federal agencies as proof of identity	Arizona driver license or non-operating identification license applicants who request issuance of a secure credential that can be accepted by federal agencies as proof of identity
Local Businesses	Local Businesses
Political subdivisions	Political subdivisions

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

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

- Minimal           \$9,999 or less
- Moderate       \$10,000 to \$59,999
- Substantial      \$60,000 or more

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

These rules permanently codify the \$25 fee currently charged by the Department for issuance of a driver license or non-operating identification license that can be accepted by federal agencies as proof of identity for official purposes as defined under 6 CFR 37. The Department and all other agencies that have traditionally had to carefully scrutinize a variety of official forms and other acceptable documentation to determine whether or not a person has presented valid proof of the person’s identity when conducting business with the agency, will have added assurance that all documentation submitted to

the Department on application for the Arizona travel-compliant driver license or non-operating identification license was verified through official channels before issuance, and the travel-compliant credential can be trusted and relied on as proof of the person's identity while valid.

The Department has incurred substantial costs to ensure that all Department systems are in place to bring Arizona into full compliance with federal regulations regarding the state-issuance of secure credentials that can be accepted by federal agencies as proof of a person's identity for official purposes on and after October 1, 2020. The Department also incurs substantial costs annually for maintaining access to all required federal verification systems and services. However, since the Department is able to accomplish all of the new document verification requirements of the federal regulations electronically, only a minimal amount of additional time and work will be added to each transaction, so the Department believes that the nominal \$25 application fee prescribed by these rules for issuance of the new secure travel-compliant driver license or non-operating identification license will be sufficient enough to allow the Department to operate and maintain this program at a level that is approximately equal to revenue, and no additional staffing is required.

To remain in full compliance with all federal regulations implementing the REAL ID Act of 2005, each state that issues compliant credentials must maintain access to multiple federal electronic identity verification databases, systems, web applications, and services for use in verifying all information and documentation a person may present in support of an application for a compliant driver license or non-operating identification license.

Therefore, any costs required for compliance with this rulemaking would be a result of both federal and state legislation and not necessarily a result of this rulemaking. The Department now maintains electronic access to multiple federal verification systems and services for use in accomplishing all of the required document verification, including the federal:

- Driver's License Data Verification (DLDV) service;
- Electronic Verification of Vital Events (EVVE) system;
- Help America Vote Verification (HAVV) system;
- Social Security Number Online Verification (SSOLV) service;
- U.S. Passport Verification Service (USPVS);
- U.S. Systematic Alien Verification for Entitlements (SAVE) program; and
- U.S. Verification of Lawful Status (VLS) application.

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

The Department anticipates no costs to political subdivisions of this state, however, political subdivisions should benefit from the added assurance that all documentation submitted to the Department on application for the Arizona travel-compliant driver license or non-operating identification license was verified

through official channels before issuance, and the travel-compliant credential can be trusted and relied on as proof of the person's identity while valid.

The City of Phoenix, as the owner and operator of the Phoenix Sky Harbor International Airport, may experience the most significant benefit as a result of this rulemaking and the Department's ability to continue issuing these secure travel-compliant credentials. Phoenix Sky Harbor International Airport, as one of the ten largest International airports, and the U.S. Department of Homeland Security (DHS) Transportation Security Administration (TSA), should experience an increased ability to manage airport visitors, passengers, traffic, and cargo due to the greater ease of access and movement these secure credentials can help facilitate. As the number of travelers carrying these secure travel-compliant credentials begins to increase, airport operators may be encouraged to streamline existing security screening processes to facilitate the quick clearance of passengers for domestic travel. According to its website, the Phoenix Sky Harbor International Airport has a \$106 million daily economic impact in Arizona. On a typical day more than 1,200 aircraft arrive and depart; about 120,000 passengers arrive and depart; and more than 800 tons of air cargo are handled.

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

Since this rulemaking neither requires, nor prohibits, any action on the part of any business, the Department anticipates no direct costs to businesses as a result of these rules. Any direct or indirect costs experienced by a business under these rules would be a result of the federal regulations created for implementation of the REAL ID Act of 2005, which prohibit federal agencies from accepting an Arizona driver license or non-operating identification license on and after October 1, 2020, unless the license is a secure travel-compliant credential issued by the Department in full compliance with all federal standards.

Businesses that routinely reimburse employees for costs associated with maintaining a valid driver license or non-operating identification license may experience a minimal increase in costs associated with converting each standard-issue Arizona driver license or non-operating identification license to a new secure travel-compliant credential that can be accepted by federal agencies as proof of identity for official purposes on and after October 1, 2020. Additionally, the new secure travel-compliant credentials are only issued or renewed by the Department for periods of up to eight years. However, the Department anticipates that these businesses will benefit significantly by the ease of movement their employees should experience going forward when traveling in furtherance of the business.

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

The transportation industry and consumers may experience a significant, but unquantifiable, benefit over the long term in the added ease of access and freedom of movement each holder of a travel-compliant driver license or identification license should achieve by not having to waste valuable time waiting in lines to be cleared for access by DHS or TSA when conducting business with federal authorities, accessing federal facilities, boarding federally-regulated commercial aircraft, or entering secured areas like nuclear power plants.

If a business, agency, or political subdivision requires employees to obtain a travel-compliant driver license or identification license and the employee or job applicant does not qualify for the new credential for some reason, the employee or job applicant should have the ability to present other forms of identification the employer can accept as proof of identity for employment purposes.

Arizona employers are familiar with the federal E-Verify system, which is a free internet tool that all employers must currently use, as prescribed under A.R.S. § 23-214, to instantly cross-check information from an employee's federal I-9 form, against records from USCIS and the Social Security Administration, to verify whether or not a new employee is authorized to work in this country. Similar to the federal E-Verify system, the Department now uses the SAVE Program, which provides a fast, secure and efficient verification service for federal, state and local benefit-granting agencies to verify a benefit applicant's immigration status or naturalized/derived citizenship as one of several electronic verification processes made available for states and employers as provided under the federal legislation outlined below under section (B)(5)(b).

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

The Department is committed to helping all Arizona small businesses succeed. This rulemaking does not create any significant economic impact on entities that meet the definition of a small business under A.R.S. § 41-1001, and should not affect the competitive position of any small businesses in relation to larger entities, or impede the cash flow, liquidity, or ability of small businesses to remain in the market. Additionally, this rulemaking imposes no new recordkeeping requirements on small businesses.

Business entities that require extensive domestic air travel by employees generally represent national or multi-national corporations that do not meet the definition of a small business under A.R.S. § 41-1001. However, the benefits that all businesses and employees can achieve with these travel-compliant credentials in ease-of-access and movement far outweigh the minimal application cost and any slight increase a business may experience if reimbursing the application fee paid by their employees for issuance of a travel-compliant credential.

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

Small businesses subject to these rules, as defined under A.R.S. § 41-1001(20), include those with fewer than 100 employees or less than \$4 million in annual receipts, and those that routinely reimburse employees for costs associated with obtaining or maintaining a valid Arizona driver license or non-operating identification license. These businesses may experience a minimal increase in operational costs if the

businesses require their employees to hold a secure travel-compliant credential and the business intends to reimburse the \$25 application fee paid by an employee to the Department for the issuance of a travel-compliant credential.

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

Each state is currently required to verify certain documentation when submitted by a person on application for a secure travel-compliant driver license or non-operating identification license. The verification processes required of the Department in these rules are the same as required by all Arizona employers under the laws, regulations, and programs associated with all of the following federal legislation:

The Immigration Reform and Control Act of 1986;

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996;

The Personal Responsibility and Work Opportunity Act of 1996; and

The Real ID Act of 2005.

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

Since this rulemaking neither requires, nor prohibits, any action on the part of any small business, the rules impose no other direct or indirect costs on small businesses. Therefore, the Department anticipates no direct economic impact on small businesses as a result of this rulemaking, so reduction of the impact is not necessary.

All small businesses, private persons, and consumers whether directly or indirectly affected by this rulemaking will experience an unquantifiable, but significant, benefit from the strengthened reliability on which an employer can depend knowing that each employee's proof of identity was verified by the Department before the employee received the secure travel-compliant credential.

Arizona credentials issued by the Department before the availability of these travel-compliant credentials will be acceptable by federal authorities until October 1, 2020, at which point only the federally-recognized Arizona travel-compliant credentials can be accepted in lieu of having to provide a current passport or other federally recognized documents. For this reason, the Department has begun a publicity campaign to encourage early application for these new travel-compliant credentials.

Prior to May 2018, the Department processed between 3,000 and 4,000 applications for the new secure travel-compliant credentials each month. However, after reaching-out by email to more than 1.6 million existing Arizona driver license and non-operating identification license holders urging them to consider converting to a secure travel-compliant credential, the Department has begun processing up to 10,000 of these credentials each month.

However, Department records indicate that less than four percent of Arizona's current credential holders have requested a federally-recognized travel-compliant credential. As of March 1, 2019, the Department has issued 199,373 travel-compliant driver licenses, and 6,082 travel-compliant identification licenses, for a total of 205,455 secure credentials as follows:

License Class or Type:	Total Currently Issued Credentials	Standard-issue	Percentage of Total Currently Issued Credentials	Travel-compliant	Percentage of Total Currently Issued Credentials
Non-commercial Driver	5,217,607	5,025,204	96.31%	192,403	3.69%
Commercial Driver	108,716	101,746	93.59%	6,970	6.41%
Non-operating Identification	1,078,924	1,072,842	99.44%	6,082	.56%
<b>Averaging:</b>	<b>6,405,247</b>	<b>6,199,792</b>	<b>96.45%</b>	<b>205,455</b>	<b>3.55%</b>

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

These rules permanently implement the standards and procedures necessary for the issuance of an Arizona travel-compliant driver license or non-operating identification license as an added public convenience. The rules do not require any holder of a standard-issue Arizona driver license or non-operating identification license to convert their existing credential to the new travel-compliant credential unless the person intends to use the Arizona driver license or non-operating identification license as proof of identity for acceptance by federal agencies on and after October 1, 2020.

Since a person seeking application and issuance of a travel-compliant credential under these rules does so voluntarily, as provided under A.R.S. 28-3175, the Department anticipates no significant economic impact to private persons or business entities as a result of this rulemaking. Other than the nominal \$25 application fee prescribed, this rulemaking neither requires, nor prohibits, any action on the part of any private person or consumer and imposes no direct or indirect costs. The Department collects this application fee when processing an original, reinstatement, or renewal application for any travel-compliant driver license class or an original or renewal application for a travel-compliant identification license, regardless of the application type (e.g. upgrade, downgrade, etc.).

Currently, all standard-issue Arizona driver licenses and non-operating identification licenses issued by the Department clearly state on the face of the credential “Not for Federal Identification.” However, existence of the federal disclaimer should not otherwise diminish reliance on any standard-issue Arizona credential as a reliable form of positive identification. Further, the Department does not anticipate any changes to existing federal facility admittance practices based on the Department’s ability to issue these travel-compliant credentials under the rules if the federal facility does not currently require a person to present photo identification prior to entry.

Private persons and consumers who apply to the Department for a travel-compliant driver license or non-operating identification license must apply in person to one of the Department’s Motor Vehicle Division field

offices or Authorized Third Party Providers and present documentation that is recognized by the federal government as acceptable proof of identity and evidence of legal presence in this country. The Department maintains a list of all documents that can be accepted as proof of identity on its website at [www.azdot.gov](http://www.azdot.gov).

Private persons and consumers issued a travel-compliant credential by the Department will need to renew that credential more often than is currently necessary, since federal law only allows the state to issue these credentials for periods of up to eight years. Arizona’s standard-issue driver licenses or non-operating identification licenses can be issued for periods of up to the applicant’s 65th birthday before renewal is necessary, except that everyone is required by law to have a new photo taken every 12 years.

The Department believes that these federally recognized travel-compliant credentials will become the preferred credentials for securing access to restricted federal facilities and conducting domestic travel through international airports in lieu of having to carry a passport or other qualifying documents. Additionally, the \$25 fee collected by the Department for a federally-recognized travel-compliant Arizona driver license or identification license is nominal and provides the most cost effective way to expedite domestic travel for Arizona residents who prefer to apply for this new secure credential instead of having to apply for or renew a U.S. passport, which may cost more than \$110.

While the benefits for Arizona's motoring public are not readily quantifiable, the Department believes that these rules maximize overall safety and are in the best interest of all highway users. The Department anticipates that both the public and businesses will appreciate the higher level of confidence they can all enjoy knowing that, if presented a secure travel-compliant credential issued under these rules, the credential holder’s identity was appropriately verified by the Department before issuance.

<b>Group Affected</b>	<b>Increased Cost</b>	<b>Decreased Cost</b>
<b>Description of Effect</b>	<b>Decreased Revenue</b>	<b>Increased Revenue</b>
ADOT	Substantial for the initial administrative and operating costs incurred	Minimal due to the break-even fee structure adopted by the Department for implementation of the new credentials
Political subdivisions	Minimal, if any	Minimal, if any
Businesses or consumers	Minimal to substantial depending on how many employees require conversion to the new credential and whether or not employers choose to	Minimal to substantial depending on business nature and intended purpose

	reimburse employees who pay the application fee	
Arizona's motoring public	No direct cost	Not readily quantifiable in terms of public safety

**6. Statement of the probable effect on state revenues:**

All driver license and non-operating identification license fees collected by the Department under these rules are deposited into the State Highway Fund as provided under A.R.S. § 28-6991(24) for use as authorized under A.R.S. § 28-6993 to carry out Department duties as prescribed under Title 28, Arizona Revised Statutes. This rulemaking is not expected to increase or decrease state revenues due to the break-even fee structure adopted by the Department for implementation of the new credentials.

**7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the 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 least burdensome options for any process or procedure required of the regulated public or industry. See (B)(5)(c) above.

However, since state-issued driver licenses and non-operating identification licenses have over many years prevailed across the nation as the most generally used, accepted, and preferred document for verifying a person's identity, certain uniform standards for issuance of those documents have become increasingly necessary. Due to an ever-expanding reliance on state-issued driver licenses and IDs, they have become more susceptible to potential misuse in activities associated with identity fraud, which can clearly present serious risks to both national security and the economy. Aside from the different markings used to distinguish between driver licenses and non-operating identification licenses that are REAL ID-compliant and those that are not, the licenses look very similar to the latest generation of what the Department already issues. However, the new secure travel-compliant credentials have features designed to make them tamper-proof, including holograms, a second photo and raised lettering for the date of birth.

The Department will continue providing the standard-issue Arizona driver license on collection of the age-appropriate fees provided under A.R.S. § 28-3002, and for a standard-issue Arizona non-operating identification license, the \$12 fee as provided under A.R.S. § 28-3165 and R17-4-409.

**8. Description of any data on which the rulemaking is based with a detailed explanation of how the data was obtained and why the data is acceptable. "Acceptable data" means empirical, replicable, and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

Since the costs and expenditures for small business employee reimbursements often vary by company size, industry, region and local interests, the Department is unable to anticipate, with any degree of certainty, whether or not this application fee would affect the bottom line of any business.

**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:**

As discussed above, the Department cannot provide any solid figures to illustrate the anticipated revenue this program is likely to affect since conversion from a standard-issue driver license or non-operating identification license to a new secure travel-compliant credential is completely voluntary, as provided under A.R.S. 28-3175.

## CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

**ARTICLE 1. RESERVED**  
**ARTICLE 2. VEHICLE TITLE**

**R17-4-201. Definitions**

In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2001, and 28-3001, the following definitions apply to this Article, unless otherwise specified:

“Authorized ELT Participant” means a lending institution or finance company authorized by the Division to electronically release a lien or encumbrance.

“Date of lien” means the date identified by the lienholder as the date the loan was issued to the borrower.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Encumbrance” means a lien recorded, by the Division, on a vehicle or mobile home record and the Arizona Certificate of Title.

“ELT” means Electronic Lien and Title.

“EPA standards” means the emission standards of the Environmental Protection Agency, as prescribed under 40 CFR 86.

“FMVSS” means the Federal Motor Vehicle Safety Standards as prescribed under 49 CFR 571.

“Joint tenancy with right of survivorship” means vehicle ownership by two or more persons and the deceased joint owner’s interest in the vehicle is transferred to the surviving owners.

“Lienholder” means a person or entity retaining legal possession of a vehicle or mobile home until the debtor has satisfactorily repaid the loan for which the vehicle or mobile home is designated as collateral.

“Lienholder Number” means the computer-generated record number assigned by the Division to a lienholder.

“Low-speed vehicle” has the same meaning as prescribed under 49 CFR 571.3.

“MPV” means multipurpose passenger vehicle, which has the same meaning as prescribed under 49 CFR 571.3.

“MVD” means the Arizona Department of Transportation’s Motor Vehicle Division.

“NHTSA” means National Highway Traffic Safety Administration of the United States Department of Transportation.

“Operation of law lien” means a lien resulting from the application of a state or federal statute.

“Primary lien” means the first of any multiple liens recorded on a vehicle or mobile home record.

“Registered importer” means a person registered by the NHTSA Administrator to import vehicles, as prescribed under 49 CFR 30141.

“Tenancy in common” means vehicle ownership by two or more people without the right of survivorship.

“Valid titling document” means one of the following documents showing a vehicle’s compliance with FMVSS and EPA standards:

- A NHTSA Declaration,
- A manufacturer’s letter, or
- A U.S. federal compliance label printed in English.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

**R17-4-202. Certificate of Title Form**

- A.** The Motor Vehicle Division (MVD) shall produce the Certificate of Title form on tamper-resistant and counterfeit-resistant paper.
- B.** MVD shall provide space on the Certificate of Title form for the following information:
1. Title information:
    - a. Title number;
    - b. Issue date;
    - c. Previous title number; and
    - d. State and date of previous title.
  2. Vehicle information:
    - a. Vehicle identification number (VIN);
    - b. Vehicle make, model, year, and body style;
    - c. Fuel type;
    - d. Odometer information; and
    - e. Vehicle mechanical or structural condition.
  3. Lienholder information:
    - a. Lienholder name and address;
    - b. Lienholder customer or federal identification number; and
    - c. Lien amount and lien date.
  4. Vehicle owner’s or owner’s legal designee information:
    - a. Name; and
    - b. Mailing address.
  5. Ownership change information:
    - a. Sale date;
    - b. Purchaser’s name and address;
    - c. Odometer mileage disclosure statement;
    - d. Seller’s signature; and
    - e. Seller’s signature certification.
  6. Dealer reassignment information.
  7. Other information as required by the Division for internal processing and recordkeeping.

**Historical Note**

New Section recodified from R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-203. Certificate of Title and Registration Application**

- A.** In addition to the requirements of A.R.S. §§ 28-2051 and 28-2157, a person applying for an Arizona motor vehicle title certificate and registration shall complete a form supplied by the Motor Vehicle Division that contains the following information:
1. Vehicle information:
    - a. Tab number;
    - b. Initial registration month and year;
    - c. Vehicle make, model, year, and body style;
    - d. Mechanical or structural status indicating whether the vehicle is:
      - i. Dismantled,
      - ii. Reconstructed,
      - iii. Salvaged, or
      - iv. Specially constructed;
    - e. Gross vehicle weight;
    - f. Fuel type;
    - g. Odometer information;
    - h. Current title number and titling state.
  2. An owner’s or lessee’s legal ownership status.
  3. Lienholder information:
    - a. Lienholder names and addresses, and

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

2015 (Supp. 15-2).

**Table 1. Driver Point Valuation**

Violation	Points
A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence.	8
A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor.	8
A.R.S. § 28-1383, aggravated driving or actual physical control while under the influence.	8
A.R.S. § 28-693, reckless driving.	8
A.R.S. § 28-708, racing on highways.	8
A.R.S. § 28-695, aggressive driving.	8
A.R.S. §§ 28-662, 28-663, 28-664, or 28-665, relating to a driver's duties after an accident.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing death to another person.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing serious physical injury to another person.	4
A.R.S. § 28-701, reasonable and prudent speed.	3
A.R.S. § 28-644(A)(2), driving over, across, or parking in any part of a gore area.	3
Any other traffic regulation that governs a vehicle moving under its own power.	2

**Historical Note**

New Table 1 made by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1).

**R17-4-405. Emergency Expired**

**Historical Note**

Emergency rule adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired.

**R17-4-406. Minor's Application for Permit or License**

- A.** For the purposes of administering the provisions of A.R.S. § 28-3160, the following definitions apply to this Section:
  1. "Application," means a form provided by the Division that includes the Legal Guardian Affidavit required by the Division to be submitted with each minor's driver license application.
  2. "Guardian" means one who has been appointed by a court of law to care for a minor child, but only if both parents of the child are deceased, or an agency as defined in A.R.S. § 8-513.
  3. "Parent" means the natural or adoptive father or mother of a child.
- B.** Procedure when both parents sign: If both parents sign a child's application, no proof of custody need be furnished.
- C.** Procedure when only one parent signs:
  1. If the signing parent is married to the child's other parent, that fact shall be stated and it shall be presumed the signing parent has custody of the child.

2. If the signing parent is not married to the child's parent because the other parent is deceased, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
  3. If the signing parent is not married to the child's other parent, the signing parent shall affirm, by sworn statement to the Division or a notary public, that the other parent does not have custody of the child, in which event the Division shall presume the signing parent has custody of the child.
- D.** Procedure when both parents are deceased:
    1. If both parents are deceased, the minor or minor's guardian shall attach certified copies of certificates of death or other satisfactory proof of death, that includes a court judgment, affidavits of close relatives of the child, or school records.
    2. A person who is guardian of a child shall sign an application as defined by this rule or furnish a certified court order appointing guardianship.
    3. An employer signing the application shall certify the person employs the minor on the date of application.
    4. A person who has custody of a child shall sign a Legal Guardian Affidavit affirming custody or furnish a certified court order awaiting custody.
  - E.** Proof of custody. Proof of custody may be established by a certified copy of the court order awarding custody or a written affirmation by the person signing the application.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-201 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (C)(4) should read "... governed by R17-4-58" as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-201 renumbered without change as Section R17-4-406 Supp. (87-2). Former Section R17-4-406 repealed, new Section R17-4-406 adopted effective July 14, 1989 (Supp. 89-3). Section recodified to R17-4-450 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4).

**R17-4-407. Application for Travel-Compliant Driver License or Nonoperating Identification License; Fee**

- A.** For the purposes of this Section:
  1. "Travel-compliant driver license" means a federally compliant driver license issued pursuant to A.R.S. § 28-3175.
  2. "Travel-compliant nonoperating identification license" means a federally compliant nonoperating identification license issued pursuant to A.R.S. § 28-3175.
- B.** An applicant shall apply to the Department, on a form provided by the Department, for a travel-compliant driver license or a travel-compliant nonoperating identification license.
- C.** An applicant must meet and comply with all lawful requirements for an Arizona driver license or nonoperating identification license.
- D.** An applicant shall meet and comply with all application and documentation requirements in the most current edition of 6 CFR 37, including satisfactory proof of identity, date of birth, social security number, principle residency, and evidence of lawful status in the United States. Documents and information must be verified by the Department. An applicant may obtain a

## CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

listing of acceptable documentation from the Department's website at [www.azdot.gov](http://www.azdot.gov).

- E. An applicant shall pay a \$25 fee for any class of a travel-compliant driver license or travel-compliant nonoperating identification license.
- F. A travel-compliant driver license is valid for a period of eight years after issuance and is renewable for successive periods of eight years up to but not exceed the year of the licensee's 65th birthday, except for when:
  1. The applicant is authorized for a shorter period of time as provided under A.R.S. § 13-3821, 28-3171(B), or 28-3223, or federal law authorizes the applicant's presence for a shorter period of time.
  2. The applicant is 60 years of age or older and the travel-compliant driver license is valid for a period of five years after issuance and renewable for successive periods of five years.
- G. A travel-compliant nonoperating identification license is valid for a period of eight years after issuance and is renewable for successive periods of eight years, except for when the applicant is authorized for a shorter period of time as provided under A.R.S. § 13-3821, 28-3171(B), or 28-3223, or federal law authorizes the applicant's presence for a shorter period of time.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-202 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, subsection (D) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-202 renumbered without change as Section R17-4-407 (Supp. 87-2). Section recodified to R17-4-451 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-706 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 1158, effective May 12, 2003 (Supp. 03-1). New Section made by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1).

**R17-4-408. Mandatory Extension of a Certified Ignition Interlock Device Order**

- A. For purposes of this Section, "conviction" has the meaning prescribed in A.R.S. § 28-101(12).
- B. For the duration of a certified ignition interlock device order, each conviction for violating A.R.S. §§ 28-1464(A), 28-1464(C), 28-1464(D), 28-1464(F), or 28-1464(H) of the person subject to the order will result in the Division's extension of the order.
- C. Each extension by the Division of a person's certified ignition interlock device order shall be for one year.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-203 and Appendix D adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, added (C)(5) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-203 renumbered without change as Section R17-4-408 (Supp. 87-2). Section recodified to R17-4-452 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-709.10 at 7 A.A.R. 3479, effective July 20, 2001 (Supp.

01-3).

**R17-4-409. Application for Nonoperating Identification License; Fee**

- A. This Section does not apply to applicants for a travel-compliant nonoperating identification license. Except as provided under R17-4-407, this Section applies to applicants for a nonoperating identification license.
- B. An applicant shall apply to the Department, on a form provided by the Department, for a nonoperating identification license, and shall comply with the requirements under A.R.S. § 28-3165.
- C. An applicant may obtain a listing of satisfactory proof of an applicant's name and date of birth from the Department's website at [www.azdot.gov](http://www.azdot.gov).
- D. Except as provided under A.R.S. § 28-3165, an applicant shall pay a \$12 fee for a nonoperating identification license.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-204 and Appendix B adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-204 renumbered without change as Section R17-4-409 (Supp. 87-2). Section recodified to R17-4-453 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4). Amended by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1).

**R17-4-410. Voter Registration Through the Motor Vehicle Division**

- A. For purposes of this Section:
  1. "License" has the same meaning as "driver's license" under A.R.S. § 16-111(2).
  2. "MVD" means the Arizona Department of Transportation, Motor Vehicle Division.
- B. To register to vote in Arizona through the MVD as provided for in A.R.S. § 16-112, a person who completes a transaction listed in subsection (C) shall complete and return to MVD:
  1. A Secretary of State-approved hardcopy voter registration form for the county of the person's residence, or
  2. An electronic voter registration form through MVD's ServiceArizona web site or through MVD's driver license system along with an electronic verification that the person meets voter eligibility criteria under A.R.S. § 16-101.
- C. Subsection (B) applies to the following license transactions:
  1. Initial licensee application;
  2. License renewal;
  3. Duplicate driver license; or
  4. Licensee personal information update.
- D. MVD shall transfer the voter registration forms and the data collected under this Section by:
  1. Mailing the completed hardcopy forms to the appropriate county recorder; and
  2. Transmitting the data from completed electronic voter registration forms and licensee personal information updates to the Secretary of State as prescribed under A.A.C. R2-12-605 for further distribution to the appropriate county recorder.

**Statutory Authority for  
NOTICE OF FINAL RULEMAKING  
TITLE 17. TRANSPORTATION  
CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
TITLE, REGISTRATION, AND DRIVER LICENSES**

**R17-4-101, R17-4-407, and R17-4-409**

**Authorizing Statutes (General)**

**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. § 28-3002. Fees; driver licenses; disposition; exemption**

A. The following fees are required:

1. For each original or initial application or renewal application, if a written examination is required, for the following:
  - (a) Class A driver license, twenty-five dollars.
  - (b) Class B driver license, twenty-five dollars.
  - (c) Class C driver license, twelve dollars fifty cents.
  - (d) Class D driver license issued pursuant to section 28-3171, ten dollars.
  - (e) Class M driver license issued pursuant to section 28-3171, ten dollars.

2. Except as provided in paragraph 1, for each original, renewal or reinstatement application for a class D, G or M license:

Age	Fee
50 or older	\$10.00
45-49	\$15.00
40-44	\$20.00
39 or younger	\$25.00

3. For each original or initial application or renewal examination, if a written application is required, for the following endorsements to a driver license:

- (a) Bus endorsement, ten dollars.
- (b) Hazardous materials endorsement, ten dollars.

- (c) Tank vehicle endorsement, ten dollars.
  - (d) Double-triple trailer endorsement, ten dollars.
  - (e) Motorcycle endorsement, seven dollars.
4. For taking each driving test for a:
- (a) Class A driver license, twenty-five dollars.
  - (b) Class B driver license, twenty-five dollars.
  - (c) Class C driver license, twelve dollars fifty cents.
  - (d) Bus endorsement, five dollars.
5. For each application for an instruction permit under:
- (a) Section 28-3154 or 28-3156, seven dollars.
  - (b) Section 28-3155, three dollars.
  - (c) Section 28-3225, class A, twenty-five dollars.
  - (d) Section 28-3225, class B, twenty-five dollars.
  - (e) Section 28-3225, class C, twelve dollars fifty cents.
6. For each renewal application, if a written examination is not required, for a:
- (a) Class A driver license and any endorsement, other than a hazardous materials endorsement, to the license, fifteen dollars.
  - (b) Class B driver license and any endorsement, other than a hazardous materials endorsement, to the license, fifteen dollars.
  - (c) Class C driver license and any endorsement, other than a hazardous materials endorsement, to the license, ten dollars.
7. For each application for a duplicate of a driver license, an amount determined by the director.
8. For each application for a duplicate of an instruction permit, two dollars.
9. In addition to the fees prescribed in paragraph 2 and except as provided in paragraph 11:
- (a) For reinstatement of driving privileges after suspension or disqualification, ten dollars.
  - (b) For reinstatement of driving privileges after revocation, twenty dollars.
10. For each application for an extension by mail of a driver license, five dollars.
11. In addition to the fees prescribed in paragraph 2, for reinstatement of driving privileges that were suspended or denied pursuant to section 28-1385 after completion of the suspension or revocation, fifty dollars.
12. For vision screening tests of out-of-state drivers, five dollars.
13. For class D or M driver license skills tests for out-of-state drivers, fifteen dollars.
14. For a driver license or nonoperating identification license issued pursuant to section 28-3175, an amount to be determined by the director.
- B. Except as otherwise provided by statute, the director shall immediately deposit, pursuant to sections 35-146 and 35-147, fees collected under this section in the Arizona highway user revenue fund.

C. The fees established pursuant to this section do not apply to a veteran who does not have a residence address or whose residence address is the address of a shelter that provides services to the homeless. For the purposes of this subsection, "veteran" has the same meaning prescribed in section 41-601.

**A.R.S. § 28-3165. Nonoperating identification license; immunity; rules; emancipated minors; definition**

A. On receipt of an application from a person who does not have a valid driver license issued by this state or whose driving privilege is suspended, the department shall issue a nonoperating identification license that contains a distinguishing number assigned to the licensee, the full legal name, the date of birth, the residence address and a brief description of the licensee and either a facsimile of the signature of the licensee or a space on which the licensee is required to write the licensee's usual signature with pen and ink. A nonoperating identification license that is issued to a person whose driving privilege is suspended shall not be valid for more than one hundred eighty days from the date of issuance.

B. On request of an applicant:

1. The department shall allow the applicant to provide on the nonoperating identification license a post office box address that is regularly used by the applicant.
2. If the applicant submits satisfactory proof to the department that the applicant is a veteran, the department shall allow a distinguishing mark to appear on the nonoperating identification license that identifies that person as a veteran.

C. A person who is issued a license pursuant to this section shall use it only for identification purposes of the licensee. The nonoperating identification license does not grant authority to operate a motor vehicle in this state. The department shall clearly label the nonoperating identification license "for identification only, not for operation of a motor vehicle".

D. On issuance of a driver license, the holder of a nonoperating identification license shall surrender the nonoperating identification license to the department and the department shall not refund any fee paid for the issuance of the nonoperating identification license.

E. A nonoperating identification license shall contain the photograph of the licensee. The department shall use a process in the issuance of nonoperating identification licenses that prohibits as nearly as possible the ability to superimpose a photograph on the license without ready detection. The department shall process nonoperating identification licenses and photo attachments in color.

F. On application, an applicant shall give the department satisfactory proof of the applicant's full legal name, date of birth, sex and residence address, if the applicant has a residence address, and that the applicant's presence in the United States is authorized under federal law. The application shall briefly describe the applicant, state whether the applicant has been licensed, and if so, the type of license issued, when and by what state or country and whether any such license is under suspension, revocation or cancellation. The application shall contain other identifying information required by the department.

G. The department may adopt and implement procedures to deny a nonoperating identification license to a person who has been deported. The department may adopt and implement procedures to reinstate a person's privilege to apply for a nonoperating identification license if the person's legal presence status is restored.

H. A nonoperating identification license issued by the department is solely for the use and convenience of the applicant for identification purposes.

I. The department shall adopt rules and establish fees for issuance of a nonoperating identification license, except that the department shall not require an examination.

J. The fees established pursuant to this section do not apply to any of the following:

1. A person who is sixty-five years of age or older.
2. A person who is a recipient of public monies as an individual with a disability under title XVI of the social security act, as amended.
3. A veteran who does not have a residence address.
4. A veteran whose residence address is the address of a shelter that provides services to the homeless.

K. If a person qualifies for a nonoperating identification license and is under the legal drinking age, the department shall issue a license that is marked by color, code or design to immediately distinguish it from a nonoperating identification license issued to a person of legal drinking age. The department shall indicate on the nonoperating identification license issued pursuant to this subsection the year in which the person will attain the legal drinking age.

L. If a minor has been emancipated pursuant to title 12, chapter 15, on application and proof of emancipation, the department shall issue a nonoperating identification license that contains the words "emancipated minor".

M. For the purposes of this section, "veteran" has the same meaning prescribed in section 41-601.

**A.R.S. § 28-3175. Driver licenses; nonoperating identification licenses; use for boarding aircraft; accessing restricted areas; rules**

A. Notwithstanding any other law, on or before April 1, 2016, if a driver license applicant or nonoperating identification license applicant requests a driver license or nonoperating identification license that allows the applicant to board a federally regulated commercial aircraft or to access restricted areas in federal facilities, nuclear power plants or military facilities, the department must issue the applicant the driver license or nonoperating identification license.

B. A driver license or nonoperating identification license issued pursuant to this section:

1. Shall be valid for a period not to exceed eight years.
2. May not contain radio frequency identification technology.

C. The department shall adopt rules to implement this section.

**Implementing Statutes (Specific)**

**A.R.S. § 28-3151. Driver license requirement**

A. Unless exempt pursuant to this chapter, a person shall not drive a motor vehicle or vehicle combination on a highway without a valid driver license and proper endorsement as prescribed by this chapter.

B. A person who is licensed under this chapter is entitled to exercise the privilege granted by this chapter on highways and is not required to obtain another license to exercise the privilege by a county, municipal or local board or a body with authority to adopt local police regulations.

**A.R.S. § 28-3158. Driver license or instruction permit application**

A. A person who applies for an instruction permit or for a driver license shall use a form furnished by the department.

B. An applicant shall pay the fee prescribed by section 28-3002 for a driver license or for an instruction permit issued under section 28-3154, 28-3155, 28-3156 or 28-3225. For a class A, B or C license application, payment of the fee required by this section entitles the applicant to not more than three attempts to pass the written examination or road test within twelve months from the date of the application. The department shall refund an application fee pursuant to section 28-373.

C. An applicant for an instruction permit or a driver license shall give the department satisfactory proof of the applicant's full legal name, date of birth, sex and domicile residence address in this state, if the applicant has a residence address, and that the applicant's presence in the United States is authorized under federal law.

D. The application for an instruction permit or a driver license shall state the following:

1. A brief description of the applicant and any other identifying information required by the department.
2. Whether the applicant has been licensed, and if so, the type of license issued, when the license was issued and what state or country issued the license.
3. If the applicant was never licensed, the applicant's last previous state or country of residence.
4. The social security number of the applicant.

E. The department shall:

1. Verify that a social security number provided by an applicant is a valid number assigned to that applicant.
2. Retain the social security number in its records.

F. The social security number provided to the department pursuant to subsection D of this section for an applicant's driver license or instruction permit shall not appear on an applicant's driver license or instruction permit unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. Except as provided in sections 28-455 and 41-1954, the department shall not release the social security number to any person unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. The provisions of this subsection shall be included in each application.

G. The department may adopt and implement procedures to deny a driver license or instruction permit to a person who has been deported. The department may adopt and implement procedures to reinstate a person's privilege to apply for a driver license or permit if the person's legal presence status is restored.

H. On request of an applicant, the department shall allow the applicant to provide on the license or permit a post office box address that is regularly used by the applicant.

I. The department may request an applicant who appears in person for a license, a duplicate license or reinstatement of a driving privilege to complete satisfactorily the vision screening prescribed by the department.

J. If a driver license applicant submits satisfactory proof to the department that the applicant is a veteran, on request of the applicant, the department shall allow a distinguishing mark to appear on the license that identifies the person as a veteran.

### **A.R.S. § 28-3159. Restricted licenses**

A. With good cause, the department may issue the following restricted driver licenses:

1. A driver license with any of the following:

(a) Restrictions suitable to the licensee's driving ability for the type of motor vehicle or special mechanical control devices required on a motor vehicle that the licensee may operate.

(b) Restrictions suitable to the licensee's ability to drive a motor vehicle in areas, at locations or on highways or during certain times.

(c) Other restrictions as the department determines appropriate to ensure the safe operation of a motor vehicle by the licensee.

2. A class A, B or C driver license that restricts the driver from operating:

(a) A commercial motor vehicle equipped with air brakes, if the applicant either fails the air brake component of the knowledge examination or performs the skills test in a vehicle that is not equipped with air brakes.

(b) A vehicle in interstate commerce, if the applicant is not subject to 49 Code of Federal Regulations part 391.

(c) A motor vehicle for the purposes of interstate commerce, if an applicant for a class A, B or C license is at least eighteen years of age.

3. A class A, B or C driver license with other restrictions that the department determines are appropriate to ensure the safe operation of a commercial motor vehicle by the licensee.

4. A class M license that restricts the driver from driving a vehicle other than a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less, if the applicant performs the driving examination with a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less.

5. A special ignition interlock restricted driver license pursuant to chapter 4, article 3.1 of this title.

6. A license restricting the travel of the driver as provided in section 25-518.

B. The department may either issue a special restricted license or display the restrictions on the usual driver license form.

**A.R.S. § 28-3170. Duplicate permit or license**

A. If an instruction permit or driver license issued under this chapter is lost, destroyed or made illegible, if the name or address of the applicant changes or if a new photo image is desired, the person to whom the permit or license was issued may obtain a duplicate, update or substitute of the permit or license, on payment of the fee required by section 28-3002.

B. If a person holds a driver license and wants a distinguishing mark on the license that identifies the person as a veteran, the person may obtain an update or substitute of the license after both of the following:

1. Submitting satisfactory proof to the department that the applicant is a veteran.
2. Paying the fee required by section 28-3002, subsection A, paragraph 7.

**A.R.S. § 28-3171. Driver license expiration and renewal; exception; extension**

A. Except as provided in subsection B, D or E of this section and unless medical restrictions require a shorter expiration period, a driver license:

1. Is valid until the applicant's sixty-fifth birthday.
2. Is renewable for successive periods of five years after the applicant's sixty-fifth birthday.
3. Expires on the applicant's birthday if the license was issued pursuant to subsection B of this section.

B. Notwithstanding subsection A of this section:

1. The department shall issue to an applicant a driver license that is valid for not more than five years and six months if the applicant applies within six months of the applicant's next birthday and if the applicant is sixty-four years of age or older, unless medical restrictions require a shorter expiration period.
2. On presentation of satisfactory proof of qualification, the director may issue a class D, G or M license or permit for a period of up to five years to:
  - (a) A person who is an out-of-state student or who is the spouse of an out-of-state student. For the purposes of this subdivision, "out-of-state student" has the same meaning prescribed in section 28-2001.
  - (b) An immediate family member of any active duty military personnel temporarily stationed in this state.
  - (c) Any other person for whom the director determines other circumstances justify the issuance.

C. An applicant shall apply for renewal of a driver license before the expiration of a current license. The department may require an examination of a renewal applicant for a class D, G or M license as required of an original applicant.

D. A veteran, as defined in section 41-601, whose driver license expires is not required to renew the veteran's driver license for six months from the date of the veteran's discharge from military service.

E. The department may extend the expiration date of a class D or M license for a resident if the applicant is not in this state at the time the license expires and will not be in this state for at least thirty consecutive days after the expiration of the driver license. On payment by the applicant of the fee prescribed in section 28-3002, the department shall issue a certificate of extension that is valid only if accompanied by the applicant's previous license.

An applicant for extension of a license shall comply with the following:

1. The application requirements of section 28-3158.
2. The licensing requirements of section 28-3153.
3. Medical requirements applicable to all license applicants, except that the applicant is not required to obtain an eyesight examination.

**A.R.S. § 28-3173. License update**

A. By written notice the department shall require a licensee to update the licensee's photograph or present or mail to the department in a form prescribed by the department a report based on a vision test performed by the department or an examination by an optometrist or an ophthalmologist or physician licensed to practice medicine, if the license has not been updated in the preceding twelve years.

B. The director may require a licensee to update the licensee's license at any time during the twelve year period from the date of issuance.

**A.R.S. § 28-6991. State highway fund; sources**

(L18, Ch. 248, sec. 1, Ch. 307, sec. 7 & Ch. 308, sec. 3)

The state highway fund is established that consists of:

1. Monies distributed from the Arizona highway user revenue fund pursuant to chapter 18 of this title.
2. Monies appropriated by the legislature.
3. Monies received from donations for the construction, improvement or maintenance of state highways or bridges. These monies shall be credited to a special account and shall be spent only for the purpose indicated by the donor.
4. Monies received from counties or cities under cooperative agreements, including proceeds from bond issues. The state treasurer shall deposit these monies to the credit of the fund in a special account on delivery to the treasurer of a concise written agreement between the department and the county or city stating the purposes for which the monies are surrendered by the county or city, and these monies shall be spent only as stated in the agreement.
5. Monies received from the United States under an act of Congress to provide aid for the construction of rural post roads, but monies received on projects for which the monies necessary to be provided by this state are wholly derived from sources mentioned in paragraphs 2 and 3 of this section shall be allotted by the department and deposited by the state treasurer in the special account within the fund established for each project. On completion of the project, on the satisfaction and discharge in full of all obligations of any kind created and on request of the department, the treasurer shall transfer the unexpended balance in the special account for the project into the state highway fund, and the unexpended balance and any further federal aid thereafter received on account of the project may be spent under the general provisions of this title.
6. Monies in the custody of an officer or agent of this state from any source that is to be used for the construction, improvement or maintenance of state highways or bridges.
7. Monies deposited in the state general fund and arising from the disposal of state personal property belonging to the department.

8. Receipts from the sale or disposal of any or all other property held by the department and purchased with state highway monies.
9. Monies generated pursuant to section 28-410.
10. Monies distributed pursuant to section 28-5808, subsection B, paragraph 2, subdivision (d).
11. Monies deposited pursuant to sections 28-1143, 28-2353 and 28-3003.
12. Except as provided in section 28-5101, the following monies:
  - (a) Monies deposited pursuant to section 28-2206 and section 28-5808, subsection B, paragraph 2, subdivision (e).
  - (b) One dollar of each registration fee and one dollar of each title fee collected pursuant to section 28-2003.
  - (c) Two dollars of each late registration penalty collected by the director pursuant to section 28-2162.
  - (d) The air quality compliance fee collected pursuant to section 49-542.
  - (e) The special plate administration fees collected pursuant to sections 28-2404, 28-2407, 28-2412 through 28-2416, 28-2416.01, 28-2417 through 28-2462 and 28-2514.
  - (f) Monies collected pursuant to sections 28-372, 28-2155 and 28-2156 if the director is the registering officer.
13. Monies deposited pursuant to chapter 5, article 5 of this title.
14. Donations received pursuant to section 28-2269.
15. Dealer and registration monies collected pursuant to section 28-4304.
16. Abandoned vehicle administration monies deposited pursuant to section 28-4804.
17. Monies deposited pursuant to section 28-710, subsection D, paragraph 2.
18. Monies deposited pursuant to section 28-2065.
19. Monies deposited pursuant to section 28-7311.
20. Monies deposited pursuant to section 28-7059.
21. Monies deposited pursuant to section 28-1105.
22. Monies deposited pursuant to section 28-2448, subsection D.
23. Monies deposited pursuant to section 28-3415.
24. Monies deposited pursuant to section 28-3002, subsection A, paragraph 14.
25. Monies deposited pursuant to section 28-7316.
26. Monies deposited pursuant to section 28-4302.
27. Monies deposited pursuant to section 28-3416.
28. Monies deposited pursuant to section 28-4504.

**A.R.S. § 28-6991. State highway fund; sources**

(L18, Ch. 248, sec. 1, Ch. 298, sec. 7, Ch. 307, sec. 7 & ch. 308, sec. 3. Conditionally Eff.)

The state highway fund is established that consists of:

1. Monies distributed from the Arizona highway user revenue fund pursuant to chapter 18 of this title.
2. Monies appropriated by the legislature.

3. Monies received from donations for the construction, improvement or maintenance of state highways or bridges. These monies shall be credited to a special account and shall be spent only for the purpose indicated by the donor.
4. Monies received from counties or cities under cooperative agreements, including proceeds from bond issues. The state treasurer shall deposit these monies to the credit of the fund in a special account on delivery to the treasurer of a concise written agreement between the department and the county or city stating the purposes for which the monies are surrendered by the county or city, and these monies shall be spent only as stated in the agreement.
5. Monies received from the United States under an act of Congress to provide aid for the construction of rural post roads, but monies received on projects for which the monies necessary to be provided by this state are wholly derived from sources mentioned in paragraphs 2 and 3 of this section shall be allotted by the department and deposited by the state treasurer in the special account within the fund established for each project. On completion of the project, on the satisfaction and discharge in full of all obligations of any kind created and on request of the department, the treasurer shall transfer the unexpended balance in the special account for the project into the state highway fund, and the unexpended balance and any further federal aid thereafter received on account of the project may be spent under the general provisions of this title.
6. Monies in the custody of an officer or agent of this state from any source that is to be used for the construction, improvement or maintenance of state highways or bridges.
7. Monies deposited in the state general fund and arising from the disposal of state personal property belonging to the department.
8. Receipts from the sale or disposal of any or all other property held by the department and purchased with state highway monies.
9. Monies generated pursuant to section 28-410.
10. Monies distributed pursuant to section 28-5808, subsection B, paragraph 2, subdivision (d).
11. Monies deposited pursuant to sections 28-1143, 28-2353 and 28-3003.
12. Except as provided in section 28-5101, the following monies:
  - (a) Monies deposited pursuant to section 28-2206 and section 28-5808, subsection B, paragraph 2, subdivision (e).
  - (b) One dollar of each registration fee and one dollar of each title fee collected pursuant to section 28-2003.
  - (c) Two dollars of each late registration penalty collected by the director pursuant to section 28-2162.
  - (d) The air quality compliance fee collected pursuant to section 49-542.
  - (e) The special plate administration fees collected pursuant to sections 28-2404, 28-2407, 28-2412 through 28-2416, 28-2416.01, 28-2417 through 28-2462 and 28-2514.
  - (f) Monies collected pursuant to sections 28-372, 28-2155 and 28-2156 if the director is the registering officer.
13. Monies deposited pursuant to chapter 5, article 5 of this title.
14. Donations received pursuant to section 28-2269.
15. Dealer and registration monies collected pursuant to section 28-4304.
16. Abandoned vehicle administration monies deposited pursuant to section 28-4804.
17. Monies deposited pursuant to section 28-710, subsection D, paragraph 2.

18. Monies deposited pursuant to section 28-2065.
19. Monies deposited pursuant to section 28-7311.
20. Monies deposited pursuant to section 28-7059.
21. Monies deposited pursuant to section 28-1105.
22. Monies deposited pursuant to section 28-2448, subsection D.
23. Monies deposited pursuant to section 28-3415.
24. Monies deposited pursuant to section 28-3002, subsection A, paragraph 14.
25. Monies deposited pursuant to section 28-7316.
26. Monies deposited pursuant to section 28-4302.
27. Monies deposited pursuant to section 28-3416.
28. Monies deposited pursuant to section 28-4504.
29. Monies deposited pursuant to section 28-2098.

**A.R.S. § 28-6993. State highway fund; authorized uses**

A. Except as provided in subsection B of this section and section 28-6538, the state highway fund shall be used for any of the following purposes in strict conformity with and subject to the budget as provided by this section and by sections 28-6997 through 28-7003:

1. To pay salaries, wages, necessary travel expenses and other expenses of officers and employees of the department and the incidental office expenses, including telegraph, telephone, postal and express charges and printing, stationery and advertising expenses.
2. To pay for both:
  - (a) Equipment, supplies, machines, tools, department offices and laboratories established by the department.
  - (b) The construction and repair of buildings or yards of the department.
3. To pay the cost of both:
  - (a) Engineering, construction, improvement and maintenance of state highways and parts of highways forming state routes.
  - (b) Highways under cooperative agreements with the United States that are entered into pursuant to this chapter and an act of Congress providing for the construction of rural post roads.
4. To pay land damages incurred by reason of establishing, opening, altering, relocating, widening or abandoning portions of a state route or state highway.
5. To reimburse the department revolving account.
6. To pay premiums on authorized indemnity bonds and on compensation insurance under the workers' compensation act.
7. To defray lawful expenses and costs required to administer and carry out the intent, purposes and provisions of this title, including repayment of obligations entered into pursuant to this title, payment of interest on obligations entered into pursuant to this title, repayment of loans and other financial assistance, including repayment of

advances and interest on advances made to the department pursuant to section 28-7677, and payment of all other obligations and expenses of the board and department pursuant to chapter 21 of this title.

8. To pay lawful bills and charges incurred by the state engineer.

9. To acquire, construct or improve entry roads to state parks or roads within state parks.

10. To acquire, construct or improve entry roads to state prisons.

11. To pay the cost of relocating a utility facility pursuant to section 28-7156.

12. For the purposes provided in subsections C, D and E of this section and sections 28-1143, 28-2353 and 28-3003.

13. To pay the cost of issuing an Arizona centennial special plate pursuant to section 28-2448.

B. For each fiscal year, the department of transportation shall allocate and transfer monies in the state highway fund to the department of public safety for funding a portion of highway patrol costs in eight installments in each of the first eight months of a fiscal year that do not exceed ten million dollars.

C. Subject to legislative appropriation, the department may use the monies in the state highway fund as prescribed in section 28-6991, paragraph 12 to carry out the duties imposed by this title for registration or titling of vehicles, to operate joint title, registration and driver licensing offices, to cover the administrative costs of issuing the air quality compliance sticker, modifying the year validating tab and issuing the windshield sticker and to cover expenses and costs in issuing special plates pursuant to sections 28-2404, 28-2407, 28-2412 through 28-2462 and 28-2514.

D. The department shall use monies deposited in the state highway fund pursuant to chapter 5, article 5 of this title only as prescribed by that article.

E. Monies deposited in the state highway fund pursuant to section 28-2269 shall be used only as prescribed by that section.

F. Monies deposited in the state highway fund pursuant to section 28-710, subsection D, paragraph 2 shall only be used for state highway work zone traffic control devices.

G. The department may exchange monies distributed to the state highway fund pursuant to section 28-6538, subsection A, paragraph 1 for local government surface transportation program federal monies suballocated to councils of government and metropolitan planning organizations if the local government scheduled to receive the federal monies concurs. An exchange of state highway fund monies pursuant to this subsection shall be in an amount that is at least equal to ninety percent of the federal obligation authority that exists in the project for which the exchange is proposed.

H. The department shall use monies deposited in the state highway fund pursuant to section 28-1105, subsection A, paragraph 2, subdivision (a) only for a transportation facility that is located within twenty drivable miles of the international port of entry and shall spend the monies proportionally based on the amount of total monies collected pursuant to section 28-1105, subsection A, paragraph 2, subdivision (a). For the purposes of this subsection, "transportation facility" means a highway or a state route or a county, city or town road that is used by a commercial vehicle or a commercial vehicle combination for which an axle fee is paid pursuant to section 28-5474.

**A.R.S. § 41-1080. Licensing eligibility; authorized presence; documentation; applicability; definitions**

A. Subject to subsections C and D of this section, an agency or political subdivision of this state shall not issue a license to an individual if the individual does not provide documentation of citizenship or alien status by presenting any of the following documents to the agency or political subdivision indicating that the individual's presence in the United States is authorized under federal law:

1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.
2. A driver license issued by a state that verifies lawful presence in the United States.
3. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
4. A United States certificate of birth abroad.
5. A United States passport.
6. A foreign passport with a United States visa.
7. An I-94 form with a photograph.
8. A United States citizenship and immigration services employment authorization document or refugee travel document.
9. A United States certificate of naturalization.
10. A United States certificate of citizenship.
11. A tribal certificate of Indian blood.
12. A tribal or bureau of Indian affairs affidavit of birth.
13. Any other license that is issued by the federal government, any other state government, an agency of this state or a political subdivision of this state that requires proof of citizenship or lawful alien status before issuing the license.

B. This section does not apply to an individual if either:

1. Both of the following apply:
  - (a) The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country.
  - (b) The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.
2. All of the following apply:
  - (a) The individual is a resident of another state.
  - (b) The individual holds an equivalent license in that other state and the equivalent license is of the same type being sought in this state.
  - (c) The individual seeks the Arizona license to comply with this state's licensing laws and not to establish residency in this state.

C. If, pursuant to subsection A of this section, an individual has affirmatively established citizenship of the United States or a form of nonexpiring work authorization issued by the federal government, the individual, on renewal or reinstatement of a license, is not required to provide subsequent documentation of that status.

D. If, on renewal or reinstatement of a license, an individual holds a limited form of work authorization issued by the federal government that has expired, the individual shall provide documentation of that status.

E. If a document listed in subsection A, paragraphs 1 through 12 of this section does not contain a photograph of the individual, the individual shall also present a government issued document that contains a photograph of the individual.

F. For the purposes of this section:

1. "Agency" means any agency, department, board or commission of this state or any political subdivision of this state that issues a license for the purposes of operating a business in this state or to an individual who provides a service to any person.
2. "License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state or to an individual who provides a service to any person where the license is necessary in performing that service.

#### **Reference Links to Federal Statutes and Regulations**

[6 CFR 37](#);

[Real ID Act of 2005, Public Law 109-13, 119 Stat. 302](#);

[The Immigration Reform and Control Act of 1986](#);

[The Illegal Immigration Reform and Immigrant Responsibility Act of 1996](#); and

[The Personal Responsibility and Work Opportunity Act of 1996](#).

The Department's Website [www.azdot.gov](http://www.azdot.gov) Keyword "[Travel ID](#)"

**DEPARTMENT OF INSURANCE**

Title 20, Chapter 6, Article 11, Medicare Supplement Insurance



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 30, 2019

**SUBJECT: DEPARTMENT OF INSURANCE (R19-0703)**  
Title 20, Financial Institutions and Insurance, Chapter 6, Department of Insurance

**Amend** Article 11  
**Amend** R20-6-1101

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The Department of Insurance (Department) is seeking to amend 20 A.A.C. Chapter 6, Article 11, Medicare Supplement Insurance. The Department also seeks to amend R20-6-1101, which relates to the Department's incorporation by reference and modification of the Model Regulation to implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards Model Act, August 2016.

The Department seeks to amend R20-6-1101 to remain compliant with A.R.S. § 41-1028 and the mandate in A.R.S. § 20-1133, by amending its rules to reflect the changes made by the NAIC to the Model Regulation. The Department also seeks to amend this rule to update the addresses for the Department and the NAIC in order to remain compliant with A.R.S. § 41-1028(D).

The Department received an exemption from the rulemaking moratorium on February 20, 2019.

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

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

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

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

3. **Summary of the agency's economic impact analysis:**

This rulemaking incorporates by reference National Association of Insurance (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (Model Regulation). Under ARS § 20-1133, the Director of the Arizona Department of Insurance is required to adopt rules as necessary to comply with the requirements of the Social Security Disability Amendments of 1980 (P.L. 96-265, 42 U.S.C. § 1395ss) and federal laws or regulations pertaining to that section, so Arizona may retain its full authority to regulate minimum standards for Medicare supplement insurance.

The rulemaking updates the reference to the correct version of the Model Regulation and also corrects the NAIC and Arizona Department of Insurance addresses. Stakeholders include the Department and insurers issuing Medicare supplement insurance policies.

The Department does not anticipate any economic impact as the proposed rulemaking only updates the Model Regulation with which health insurers already comply.

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

The Department knows of no less intrusive or less costly alternative methods for achieving the purpose of the proposed rulemaking.

5. **What are the economic impacts on stakeholders?**

The Department does not anticipate any costs will be incurred or any benefits realized by businesses directly affected by the proposed rulemaking. The Department does not anticipate any direct affect to private persons and consumers or political subdivisions. The rulemaking formally incorporates the Model Regulation with which health insurers already comply.

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

The Department indicates it did not receive any comments for this rulemaking.

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

No. The Notice of Final Rulemaking has no substantive changes from the Notice of Proposed Rulemaking.

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

No. The rules are not more stringent than federal law.

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

A.R.S. § 20-216 authorizes the Department to issue a certificate of authority to insurers doing business in Arizona. No general permit is used.

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

No. The Department did not review or rely on any study for this rulemaking.

11. **Conclusion**

As stated above the Department seeks to amend R20-6-1101 to remain compliant with A.R.S. § 41-1028 and the mandate in A.R.S. § 20-1133. The proposed amendments do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Council staff finds the rules as amended are clear, concise, understandable, and consistent with legislative intent. Council staff recommends approval of this rulemaking.



**Office of the Director  
Arizona Department of Insurance**

100 North 15<sup>th</sup> Avenue, Suite 102, Phoenix, Arizona 85007-2624

Phone: (602) 364-3100

Web: <https://insurance.az.gov>

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**Douglas A. Ducey, Governor  
Keith A. Schraad, Director**

May 15, 2019

Nicole Sornsins, Council Chair  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Arizona Department of Insurance  
Notice of Final Rulemaking; Title 20, Chapter 6, Article 11: Medicare  
Supplement Insurance

Dear Ms. Sornsins:

Please accept this Notice of Final Rulemaking from the Arizona Department of Insurance ("Department") for consideration and approval by the Council.

In compliance with R1-6-201(A)(1) we respectfully submit:

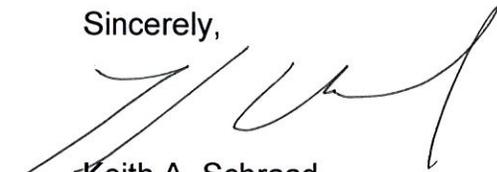
- a. The close of record date for this rulemaking is May 14, 2019. The Department published the Notice of Close of Record on its website.
- b. This rulemaking is not related to a five-year review report although a five-year review report will be submitted on this article later this month.
- c. The rule does not establish a new fee.
- d. The rule does not contain a fee increase.
- e. An immediate effective date is not being requested for the rule.
- f. We certify that the Preamble discloses a reference to any study relevant to the rule that the Department relied on in our evaluation of the rule.
- g. No additional employees are necessary to implement and enforce the rule.
- h. Please find the following documents enclosed (no one submitted written comments or testimony on the rulemaking; and no one submitted an analysis regarding the rule's impact on the competitiveness of businesses in this state as compared to businesses in other states):
  - i. Notice of Final Rulemaking;

Notice of Final Rulemaking  
May 15, 2019

- ii. An economic, small business, and consumer impact statement pursuant to A.R.S. § 41-1055;
- iii. A copy of the material incorporated by reference; and
- iv. A copy of the general and specific statutes authorizing the rule, including relevant statutory definitions. No terms are defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.

If you have any questions or need additional information regarding this Notice of Final Rulemaking, please feel free to contact Mary Kosinski, Regulatory Legal Affairs Officer, at (602) 364-3476.

Sincerely,



Keith A. Schraad  
Director

Enclosures

**NOTICE OF FINAL RULEMAKING**  
**TITLE 20 COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE**  
**CHAPTER 6. DEPARTMENT OF INSURANCE**

**PREAMBLE**

<b><u>1. Article, Part or Section Affected</u></b>	<b><u>Rulemaking Action</u></b>
Article 11	Amend
R20-6-1101	Amend

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

Authorizing statute: A.R.S. § 20-143

Implementing statute: A.R.S. § 20-1133

**3. The effective date of the rule:**

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-2032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable

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

Not applicable.

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 896, April 12, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 880, April 12, 2019

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

Name: Mary E. Kosinski

Address: Arizona Department of Insurance

100 N. 15<sup>th</sup> Ave, Suite 102

Phoenix, Arizona 85007-2624

Telephone: (602) 364-3100

E-mail: [mkosinski@azinsurance.gov](mailto:mkosinski@azinsurance.gov)

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

This rule incorporates by reference National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (Model Regulation). Under A.R.S. § 20-1133, the Director is required to adopt rules as necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265, 42 U.S.C. § 1395ss) and federal laws or regulations pertaining to that section, so that Arizona may

retain its full authority to regulate minimum standards for Medicare supplement insurance.

Because A.R.S. § 41-1028 requires a statement that incorporated matter does not include any later amendments or editions of the incorporated matter, the Department seeks to amend R20-6-1101 to accomplish the mandate of A.R.S. § 20-1133 to reflect changes made by the NAIC to the Model Regulation.

In addition, both the Department and the NAIC have addresses that are no longer correct in the current rule. The Department needs to update these addresses to remain compliant with A.R.S. § 41-1028(D) which requires: The rules shall state where copies of the incorporated matter are available from the agency issuing the rule and from the agency of the United States or this state or the organization or association originally issuing the matter.

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

None.

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

Not applicable.

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

The Department does not anticipate any economic impact to the insurers who file Medicare Supplement policies with the Department. The proposed rulemaking formally incorporates the version of the Model Regulation already being complied with by health insurers making filings in Arizona.

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

The Department received no comments from the public on the proposed rule. In addition, no one within the Department suggested a change to the proposed rule. Therefore, the Department did not make any changes to the proposed rule and the final rule, as submitted, is identical to the proposed rule.

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

No person submitted a comment during the 30-day comment period.

**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:**

Not applicable.

**a. Whether the rule requires a permit, whether a general permit is used**

**and if not, the reasons why a general permit is not used:**

The rule does not require a permit.

A.R.S. § 20-216 authorizes the Department to issue a certificate of authority to insurers doing business in Arizona if they meet statutorily specified criteria. No general permit is used.

**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:**

Under A.R.S. § 20-1133, the Director is required to adopt rules as necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265, 42 U.S.C. § 1395ss) and federal laws or regulations pertaining to that section, so that Arizona may retain its full authority to regulate minimum standards for Medicare supplement insurance.

The rule is not more stringent than the federal law.

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

Not applicable.

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

R20-6-1101(A) references the National Association of Insurance Commissioner's (NAIC) Model Regulation to Implement the NAIC

Medicare Supplement Insurance Minimum Standards Model Act, August 2016.

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

The Historical Note for this rule shows that it was adopted as an Emergency rule, effective December 18, 1991 (valid for only 90 days). However, the Arizona Administrative Register (“A.A.R.”) records it as a proposed rule heard by the Governor’s Regulatory Review Council on November 5, 1991. (91 A.A.R. 190, December 2, 1991.)

The next entry in the Historical Note for this rule indicates that it was adopted again as an Emergency rule, effective March 17, 1992 (valid for only 90 days). (92 A.A.R. 35, February 3, 1992.) The Department promulgated this rulemaking subject to certification by the Attorney General on September 11, 1991.

The next entry in the Historical Note for this rule indicates that it was adopted on May 28, 1992. However, the Register again records it as an Emergency rule promulgated subject to certification by the Attorney General on September 11, 1991. (92 A.A.R. 73, April 1, 1992.)

In 1996, the Department opened the docket for Article 11 noting that it intended to promulgate the proposed changes to the Article by April 28, 1996,

by Emergency Rulemaking while, at the same time, pursue formal adoption of the amendments pursuant to a regular rulemaking. (2 A.A.R. 1197, March 8, 1996. Docket Opening; 2 A.A.R. 1256, March 22, 1996. Proposed Rulemaking). The Notice of Final Rulemaking appeared in the September 6, 1996 Register. (2 A.A.R. 3843, September 6, 1996.)

Further amendments occurred to this rule in 2002. (8 A.A.C. 2454, June 7, 2002.) In 2005, the Department repealed the Article and replaced it with one rule, R20-6-1101, which incorporated the NAIC Medicare Supplement Insurance Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (Model Regulation) by reference. (11 A.A.C. 3671, September 30, 2005.) Prior to the current rulemaking, the Department amended this rule again in 2009. (15 A.A.C. 996, June 19, 2009.)

**16. The full text of the rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE**

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**ARTICLE 11. MEDICARE SUPPLEMENT INSURANCE**

**Section**

**R20-6-1101. Incorporation by Reference and Modifications**

**ARTICLE 11. MEDICARE SUPPLEMENT INSURANCE**

**R20-6-1101. Incorporation by Reference and Modifications**

- A.** The Department incorporates by reference the Model Regulation to Implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards Model Act, ~~October 2008~~ August 2016 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, ~~2910 N. 44th St., Phoenix, AZ 85018~~ 100 N. 15<sup>th</sup> Ave., Suite 102, Phoenix, AZ 85007-2624 and available from the National Association of Insurance Commissioners, Publications Department, ~~2301 McGee St., Suite 800, Kansas City, MO 64108~~ 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197.
- B.** The Model Regulation is modified as follows:
1. In addition to the terms defined in the Model Regulation, the following

definitions apply:

- a. "Agent" means an insurance producer as defined in A.R.S. § 20-281(5).
- b. "Commissioner" means the Director of the Arizona Department of Insurance.
- c. "HMO" and "health maintenance organization" mean a health care services organization as defined in A.R.S. § 20-1051(7).
- d. "Regulation" means Article.

2. Section 3(A)(2) reads:

(2) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state including association plans.

3. Section ~~8A(7)(c)~~ 8(A)(7)(c) reads:

- c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after

the date of the loss of the group health plan and pays the premium attributable to the supplemental policy period, effective as of the date of termination of enrollment in the group health plan.

~~3.~~ 4. Section 8.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any [1990 Standardized Medicare supplement benefit plan] for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.

~~4.~~ 5. Section 8.1(A)(7)(c) is revised to read as follows:

Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of

the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

5. 6. Section 9.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.

6. 7. Section 9.2 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals

newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of A.R.S. § 20-1133.

~~8. Subsection G of Section 15~~ Section 15(G) is revised as follows:

~~G.~~ An insurer shall not file or request approval of a rate structure for its Medicare supplement policies or certificates based upon attained-age rating as a structure or methodology.

~~7. Tables for PLAN F or HIGH DEDUCTIBLE PLAN F are revised as follows:~~

~~a. For the table entitled "PARTS A & B" a column heading is revised from "AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\* PLAN PAYS" to "[AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\*] PLAN PAYS."~~

~~b. For the table entitled "PARTS A & B" a column heading is revised from "IN ADDITION TO \$[2000] DEDUCTIBLE,\*\* YOU PAY" to "[IN ADDITION TO \$[2000] DEDUCTIBLE,\*\*] YOU PAY."~~

~~c. For the table entitled "OTHER BENEFITS NOT COVERED BY MEDICARE" a column heading is revised from "AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\* PLAN PAYS" to "[AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\*] PLAN PAYS."~~

~~d. For the table entitled "OTHER BENEFITS NOT COVERED BY MEDICARE" a column heading is revised from "IN ADDITION TO \$[2000] DEDUCTIBLE,\*\* YOU PAY" to "[IN ADDITION TO \$[2000]~~

~~DEDUCTIBLE,\*\*] YOU PAY."~~

~~8.~~ 9. Section 23 is revised as follows:

- A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.
- B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE**

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**ARTICLE 11. MEDICARE SUPPLEMENT INSURANCE**

**1. Identification of the proposed rule making.**

Arizona Revised Statutes (“ARS”) § 20-1133 requires the Director of the Arizona Department of Insurance (“Director”) to adopt rules as necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265, 42 U.S.C. § 1395ss) and federal laws or regulations pertaining to that section, so that Arizona may retain its full authority to regulate minimum standards for Medicare supplement insurance.

In response, the Department promulgated Article 11. Medicare Supplement Insurance, Sections R20-6-1101 through R20-6-1121 and Appendices A through F, to adopt the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (“Model Regulation”). However, the Department later repealed sections R20-6-1102 through 1121 and the Appendices and opted to incorporate the Model Regulation by reference instead.

A.A.C. R20-6-1101 incorporates by reference the Model Regulation with changes to conform the Model Regulation for application to Arizona.

The Medicare Access and CHIP Reauthorization Act of 2015 (“MACRA”) requires states to adopt the changes necessary to implement MACRA to be effective January

1, 2020, to avoid losing regulatory authority over the provisions of the MACRA amendments.

The rulemaking updates the reference to the correct version of the Model Regulation and also corrects the NAIC and Arizona Department of Insurance addresses.

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

Insurers issuing Medicare Supplement insurance policies will be directly affected by the proposed rule making. The effect of this rule change is to give insurers clear direction about which version of the Model Regulation governs their filings and allows the State of Arizona to retain its authority to review these filings.

**3. Cost benefit analysis of:**

**a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.**

The Department does not anticipate any costs will be incurred or any benefits realized by implementation and enforcement of the proposed rule making.

**b. The probably costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.**

Not applicable.

**c. The probable costs and benefits to business directly affected by the proposed rule making including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.**

The Department does not anticipate any costs will be incurred or any benefits realized by businesses directly affected by the proposed rule making. The proposed rulemaking formally incorporates the Model Regulation already being complied with by health insurers making filings in Arizona.

**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 rule making.**

No impact is anticipated.

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

**a. Identification of the small businesses subject to the proposed rule making.**

Not applicable. This rule making applies to insurers who issue Medicare Supplement Insurance in Arizona.

**b. Administrative and other costs required for compliance with the proposed rule making.**

The Department does not anticipate any administrative or other costs will be incurred by insurers complying with the proposed rule making.

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

Not applicable.

**d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.**

No direct effect to private persons and consumers.

**6. Statement of the probable effect on state revenues.**

No effect on state revenues is anticipated.

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

No less intrusive or less costly alternative methods for achieving the purpose of the proposed rule making is available.

**8. Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

Not applicable.

## CHAPTER 6. DEPARTMENT OF INSURANCE

and described as part of the outline of coverage.]

[Any additional benefit triggers shall be explained in this Section. If these triggers differ for different benefits, explanation of the triggers shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

## 10. LIMITATIONS AND EXCLUSIONS.

[Describe:

- (a) Preexisting conditions;
- (b) Non-eligible facilities and providers;
- (c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions and exceptions;
- (e) Limitations.]

[This Section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph 6 above.]

**THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.**

## 11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) Describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

## 12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

## 13. PREMIUM.

[(a)State the total annual premium for the policy;

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

## 14. ADDITIONAL FEATURES.

[(a)Indicate if medical underwriting is used;

(b)Describe other important features.]

## 15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

**Historical Note**

New Appendix J renumbered from Appendix C and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

**ARTICLE 11. MEDICARE SUPPLEMENT INSURANCE****R20-6-1101. Incorporation by Reference and Modifications**

A. The Department incorporates by reference the Model Regulation to Implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards Model Act, October 2008 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and available from the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108.

B. The Model Regulation is modified as follows:

1. In addition to the terms defined in the Model Regulation, the following definitions apply:
  - a. "Agent" means an insurance producer as defined in A.R.S. § 20-281(5).
  - b. "Commissioner" means the Director of the Arizona Department of Insurance.
  - c. "HMO" and "health maintenance organization" mean a health care services organization as defined in A.R.S. § 20-1051(7).
  - d. "Regulation" means Article.
2. Section 8A(7)(c) reads:
  - c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section

226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss of the group health plan and pays the premium attributable to the supplemental policy period, effective as of the date of termination of enrollment in the group health plan.

3. Section 8.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any [1990 Standardized Medicare supplement benefit plan] for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.

4. Section 8.1(A)(7)(c) is revised to read as follows: Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended

## CHAPTER 6. DEPARTMENT OF INSURANCE

(for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 186(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

5. Section 9.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:  
The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.
6. Subsection G of Section 15 is revised as follows:
  - G. An insurer shall not file or request approval of a rate structure for its Medicare supplement policies or certificates based upon attained-age rating as a structure or methodology.
7. Tables for PLAN F or HIGH DEDUCTIBLE PLAN F are revised as follows:
  - a. For the table entitled "PARTS A & B" a column heading is revised from "AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\* PLAN PAYS" to "[AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\*] PLAN PAYS."
  - b. For the table entitled "PARTS A & B" a column heading is revised from "IN ADDITION TO \$[2000] DEDUCTIBLE,\*\* YOU PAY" to ["IN ADDITION TO \$[2000] DEDUCTIBLE,\*\*] YOU PAY."
  - c. For the table entitled "OTHER BENEFITS - NOT COVERED BY MEDICARE" a column heading is revised from "AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\* PLAN PAYS" to "[AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\*] PLAN PAYS."
  - d. For the table entitled "OTHER BENEFITS - NOT COVERED BY MEDICARE" a column heading is revised from "IN ADDITION TO \$[2000] DEDUCTIBLE,\*\* YOU PAY" to ["IN ADDITION TO \$[2000] DEDUCTIBLE,\*\*] YOU PAY."
8. Section 23 is revised as follows:
  - A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.
  - B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions,

waiting periods, elimination periods and probationary periods.

**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1101 recodified from R4-14-1101 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 15 A.A.R. 996, effective June 2, 2009 (Supp. 09-2).

**R20-6-1102. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted with changes effective May 28, 1992 (Supp. 92-2). R20-6-1102 recodified from R4-14-1102 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1102.01 Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1103. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1103 recodified from R4-14-1103 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1104. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1104 recodified from R4-14-

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1104 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1105. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1105 recodified from R4-14-1105 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1106. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1106 recodified from R4-14-1106 (Supp. 95-1). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1107. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted with changes effective May 28, 1992 (Supp. 92-2). R20-6-1107 recodified from R4-14-1107 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1108. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1108 recodified from R4-14-1108 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1109. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective

March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1109 recodified from R4-14-1109 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1110. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1110 recodified from R4-14-1110 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1111. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1111 recodified from R4-14-1111 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1112. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1112 recodified from R4-14-1112 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1113. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1113 recodified from R4-14-1113 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1114. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective

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March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1114 recodified from R4-14-1114 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1115. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1115 recodified from R4-14-1115 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1116. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1116 recodified from R4-14-1116 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1117. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1117 recodified from R4-14-1117 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1118. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1118 recodified from R4-14-1118 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1119. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1119 recodified from R4-14-1119 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

05-3).

**R20-6-1120. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1120 recodified from R4-14-1120 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1121. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix A. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again and correction made to heading of form on last page of Appendix A effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Appendix A repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix B. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again and corrections made to Plan C (Medicare (Part B) - Medical Services - Per Calendar Year) and Plan J (Other Benefits) effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Appendix B repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix C. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Appendix C repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix D. Repealed**

## CHAPTER 6. DEPARTMENT OF INSURANCE

**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Appendix D repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix E. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Appendix E repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix F. Repealed****Historical Note**

Appendix F adopted effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Appendix F repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**ARTICLE 12. HIV/AIDS: PROHIBITED AND REQUIRED PRACTICES****R20-6-1201. Definitions**

- A. "AIDS" means Acquired Immune Deficiency Syndrome.
- B. "Applicant" means an applicant for a life or disability insurance policy or coverage under a health care plan, as well as any potential certificate holder or dependent covered under such policy or plan.
- C. "Insurer" means life and disability insurers (including but not limited to health insurers), hospital and medical service corporations, and health care services organizations, including all employees, contractors, and agents thereof.
- D. "Person" means any individual, company, insurer, association, organization, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, or entity.

**Historical Note**

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1201 recodified from R4-14-1201 (Supp. 95-1).

**R20-6-1202. Applications for Insurance**

- A. Insurers shall not use questions on applications for life or disability policies or health care plans that inquire directly or indirectly about:
  1. The sexual orientation of an applicant;
  2. An applicant's receipt of transfusions of blood or blood products; or
  3. Whether or not the applicant has had any HIV-related test, except as provided in subsection (B) of this rule.
- B. Insurers may include specific questions on applications for life or disability insurance policies or health care plans asking if the applicant has ever been diagnosed or treated for AIDS or AIDS-related conditions or tested positive for the presence of HIV antibodies, antigens, or the virus. No adverse underwriting decision shall be made on the basis of any prior positive HIV-related test or tests unless the insurer has verified that the

prior test(s) consisted of both a positive screening test such as enzyme-linked immunoassay (ELISA) and a positive supplemental test such as a Western Blot. All such tests used shall be approved and licensed by the Food and Drug Administration and conducted in accordance with the manufacturer's directions for use, including but not limited to the manufacturers' specified interpretation of positivity.

**Historical Note**

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1202 recodified from R4-14-1202 (Supp. 95-1).

**R20-6-1203. Testing for HIV; Consent Form**

- A. An insurer may test for HIV infection in the same way that the insurer tests for other conditions that affect mortality and morbidity. No adverse underwriting decision shall be made on the basis of a positive result to an HIV-related test unless the result consists of both a positive screening test such as enzyme-linked immunoassay (ELISA) and a positive supplemental test such as a Western Blot. All such tests used shall be approved and licensed by the Food and Drug Administration and conducted in accordance with the manufacturers' directions for use, including but not limited to the manufacturers' specified interpretation of positivity.
- B. If an applicant is requested to take an HIV-related test in connection with an application for a life or disability insurance policy or a health care plan, the insurer shall reveal the use of such test to the applicant and shall obtain the written consent of the applicant prior to the administration of such test. The insurer shall allow the applicant up to 10 days within which to decide whether or not to sign the consent form, and no adverse underwriting decision may be made on the basis of the applicant's delay during this time period. Insurers need not provide pretest counseling to applicants but shall advise applicants of the availability of counseling in accordance with subsection (C) of this rule.
- C. The written consent form, which shall be approved by the Director in advance of its use, shall contain the following information:
  1. Purpose of the consent form. The form shall contain a clear disclosure that the test to be performed is a test for the presence of HIV antibodies, antigens, or the virus, and that underwriting decisions will be based on the results of such test. The form shall further provide notice of a period of not less than 10 days during which the applicant may decide whether or not to sign the form, along with a disclosure that the applicant's refusal to be tested may be used as a reason to deny coverage.
  2. Information on HIV. The form shall provide clear, concise, and accurate information on how the disease is spread and what behavior places persons at risk of contracting the virus.
  3. Pretest counseling considerations. The written consent form shall contain information advising the applicant that counseling is recommended by many public health organizations and that the applicant may obtain such counseling at the applicant's own expense. The form shall contain current information as provided by the Department regarding the availability in Arizona of free confidential or anonymous counseling through county health departments and through other governmental or government-funded agencies.
  4. Disclosure of test results. The form shall advise the applicant that all test results shall be treated confidentially and that results shall be released only to the applicant and the named insurer or upon the applicant's written consent or as otherwise required or allowed by law, including but

## General Statute Authorizing the Rule

### 20-143. Rule-making power

A. The director may make reasonable rules necessary for effectuating any provision of this title.

B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.

C. All rules made pursuant to this section shall be subject to title 41, chapter 6.

D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.

## Specific Statute Authorizing the Rule

### 20-1133. Medicare supplement insurance; applicability

A. The director shall adopt those rules as are necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265; 42 United States Code section 1395ss) and any federal laws or regulations pertaining to that section, so that this state may retain its full authority to regulate minimum standards for medicare supplement insurance.

B. Subject to the other limitations provided in this subsection, no benefit mandated in this title for health insurance policies shall apply to medicare supplement insurance policies unless such mandated policy benefits are set forth in rules adopted pursuant to this section or unless the statute mandating policy benefits expressly states that it is made specifically applicable to medicare supplement insurance policies. No medicare supplement insurance policy shall contain any exclusion for services provided by any type of properly licensed health care provider if the provider's services are eligible for medicare reimbursement and if the specific services in question would be covered by medicare. In no event shall the scope of benefits of a medicare supplement policy be less than the minimum level of benefits established by federal law.

C. Notwithstanding any other provision of this title, rules adopted pursuant to this section apply to insurance furnished under disability insurance policies, under subscription contracts of hospital, medical, dental or optometric service corporations, under certificates of fraternal benefit societies, under evidences of coverage of health care services organizations and under coverages issued by any other insurer, which policies, contracts, certificates, membership coverages, evidences of coverage and coverages are delivered or issued for delivery in this state on or after the effective date of rules adopted pursuant to subsection A. In adopting the rules required by subsection A, the director shall prescribe an effective date of the rules that will allow insurers sufficient time to bring their forms and practices into compliance with the requirements of the rule.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 10, Article 1, General; Article 15, Abortion Clinics



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 29, 2019

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (R19-0704)**  
Title 9, Chapter 10, Health Care Institutions: Licensing

<b>Amend</b>	R9-10-119
<b>Amend</b>	R9-10-1505
<b>Amend</b>	R9-10-1509

---

This is an expedited rulemaking from the Department of Health Services that seeks to amend rules in Title 9, Chapter 19, Health Care Institutions: Licensing. Specifically, DHS seeks to amend R9-10-119, R9-10-1505, and R9-10-1509.

DHS is amending R9-10-1505 and R9-10-1509 to comply with Laws 2018, Ch. 219 which amends A.R.S. §§ 36-2161 and 36-2162 to require abortion providers to supply additional information to the Department in abortion procedures and complication reports; request additional information from women seeking abortions, and provide information to women seeking abortions who are victims of certain crimes.

DHS seeks to amend rules in 9. A.A.C 10, Article 15, Abortion Clinics to include new requirements for reporting complications according to A.R.S. § 36-2161 (A)(15), which requests information specified in A.R.S. § 36-2161 (A)(12) from a patient, and providing information required in A.R.S § 36-2161(C) to a patient, only if applicable.

Additionally, DHS is amending R9-10-119 to update cross-reference to new subsection in A.R.S. 36-2161. DHS seeks an expedited rulemaking because this rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but rather only seeks to amend rules that are now outdated by the statutory revisions made by Laws 2018, Ch. 219.

DHS received an exemption from the rulemaking moratorium on February 18, 2019.

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

Yes. This rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(6).

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

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

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

No. The rules do not establish new fees or fee increases.

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

Not applicable. Under A.R.S. § 41-1055(D)(2), an expedited rulemaking is exempt from this requirement.

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

Not applicable.

6. **What are the economic impacts on stakeholders?**

Not applicable.

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

The Department indicates it did not receive any written comments for this rulemaking.

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

No. The Notice of Final Expedited Rulemaking has no substantive changes from the Notice of Proposed Expedited Rulemaking.

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

Not applicable. Federal laws do not apply to the rule.

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

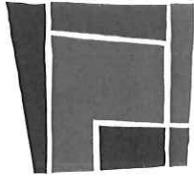
No. The sections included in this rulemaking do not require a permit or license.

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

No. The Department did not review or rely on any study for this rulemaking.

**12. Conclusion**

DHS is conducting an expedited rulemaking pursuant to A.R.S. § 41-1027 (A) to amend R9-10-119, R9-10-1505, R9-10-1509. Council staff find that DHS satisfies criteria under A.R.S. § 41-1027 (A) as it amend rules that are outdated given changes to A.R.S. §§ 36-2161 and 36-2162 pursuant to Law 2019, Ch. 219. The proposed amendments do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Council staff finds the rules as amended are clear, concise, understandable, and consistent with legislative intent. Pursuant to A.R.S. § 41-1027 (H) the expedited rulemaking becomes effective immediately. Council staff recommends approval of this rulemaking.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

May 16, 2019

Connie Wilhelm, Vice-Chair  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 N. 15th Avenue, Suite 305  
Phoenix, AZ 85007

RE: 9 A.A.C. 10 Department of Health Services – Health Care Institutions: Licensing

Dear Ms. Wilhelm:

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

The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. §§ 41-1027 and 41-1052 and A.A.C. R1-6-202:

1. The close of record:  
The close of record was May 13, 2019. Submission of the rule is within the 120 days allowed for Final Expedited Rulemaking.
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):  
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, the rulemaking amends rules that became outdated with the adoption of the statutory changes enacted through Laws 2018, Ch. 219. Thus, the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(6).
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:  
The rulemaking for 9 A.A.C. 10 does not relate to a five-year-review report.
4. A list of all items enclosed:
  - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
  - b. Statutory authority
  - c. Current rule

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

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at [Ruthann.Smejkal@azdhs.gov](mailto:Ruthann.Smejkal@azdhs.gov).

The Department is requesting that the rules be heard at the Council meeting on July 2, 2019.

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

Sincerely,

A handwritten signature in black ink, appearing to be 'RL', written over a horizontal line.

Robert Lane  
Director's Designee

RL:rms

Enclosures



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Office of Administrative Counsel and Rules  
150 N. 18th Ave., Suite 200  
Phoenix, AZ 85007

Telephone: (602) 542-1020

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**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:**

In order to ensure public health, safety, and welfare, Arizona Revised Statutes (A.R.S.) §§ 36-405 and 36-406 require the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. A.R.S. § 36-449.03 requires the Department to adopt rules that establish minimum standards and requirements for abortion clinics, a class of health care institutions. Laws 2018, Ch. 219 amends A.R.S. §§ 36-2161 and 36-2162 to require abortion providers to: supply additional information to the Department in abortion procedure and complication reports; request additional information from women seeking abortions; and provide information to women seeking abortions who are victims of certain crimes. After obtaining an exception from the rulemaking moratorium established by Executive Order 2018-02, the Department has revised rules in 9 A.A.C. 10, Articles 1 and 15 to comply with Laws 2018, Ch. 219. The Department has revised the rules in 9 A.A.C. 10, Article 15, Abortion Clinics, to include new requirements for reporting complications according to A.R.S. § 36-2161(A)(15), requesting information specified in A.R.S. § 36-2161(A)(12) from a patient, and providing information required in A.R.S. § 36-2161(C) to a patient, if applicable. In addition, A.A.C. R9-10-119 is revised to update cross-references to new subsections in A.R.S. § 36-2161. The Department believes the rulemaking meets the criteria for expedited rulemaking since the changes made will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but amend rules that became outdated with the statutory revisions made by Laws 2018, Ch. 219.

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

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

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

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

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

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

The Department did not receive any written stakeholder comments about the rulemaking during the 30-day comment period.

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

There are no other matters prescribed by statute applicable specifically to the Department or this specific rulemaking.

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

Although other Sections of this Chapter require the issuance of a permit, under A.R.S. § 36-407, the Sections included in this rulemaking do not relate to the issuance of a regulatory permit. Therefore, consideration of a general permit is not applicable to this rulemaking.

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

Federal laws do not apply to the rule.

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

No such analysis was submitted.

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

None

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

The rule was not previously made as an emergency rule.

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

**TITLE 9. HEALTH SERVICES**  
**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES**  
**HEALTH CARE INSTITUTIONS: LICENSING**

**ARTICLE 1. GENERAL**

Section

R9-10-119.     Abortion Reporting

**ARTICLE 15. ABORTION CLINICS**

Section

R9-10-1505.   Incident Reporting

R9-10-1509.   Abortion Procedures

## ARTICLE 1. GENERAL

### **R9-10-119. Abortion Reporting**

- A.** A licensed health care institution where abortions are performed shall submit to the Department, in a Department-provided format and according to A.R.S. § ~~36-2161(B) and (C)~~ 36-2161(D) and (E), a report that contains the information required in A.R.S. § 36-2161(A) and the following:
1. The final disposition of the fetal tissue from the abortion; and
  2. Except as provided in subsection (B), if custody of the fetal tissue is transferred to another person or persons:
    - a. The name and address of the person or persons accepting custody of the fetal tissue,
    - b. The amount of any compensation received by the licensed health care institution for the transferred fetal tissue, and
    - c. Whether a patient provided informed consent for the transfer of custody of the fetal tissue.
- B.** A licensed health care institution where abortions are performed is not required to include the information specified in subsections (A)(2)(a) through (c) in the report required in subsection (A) if the licensed health care institution where abortions are performed:
1. Transfers custody of the fetal tissue:
    - a. To a funeral establishment, as defined in A.R.S. § 32-1301;
    - b. To a crematory, as defined in A.R.S. § 32-1301; or
    - c. According to requirements in A.A.C. R18-13-1406, A.A.C. R18-13-1407, and A.A.C. R18-13-1408; or
  2. Complies with requirements in A.A.C. R18-13-1405.
- C.** For purposes of this Section, the following definition applies: “Fetal tissue” means cells, or groups of cells with a specific function, obtained from an aborted human embryo or fetus.

## **ARTICLE 15. ABORTION CLINICS**

### **R9-10-1505. Incident Reporting**

- A.** A licensee shall ensure that the Department is notified of an incident as follows:
1. For the death of a patient, verbal notification the next working day;
  2. For a fetus delivered alive, verbal notification the next working day; and
  3. For a serious injury of a patient or viable fetus, written notification within 10 calendar days after the date of the serious injury.
- B.** A medical director shall conduct an investigation of an incident and document an incident report that includes:
1. The date and time of the incident;
  2. The name of the patient;
  3. A description of the incident, including, if applicable, information required in A.R.S. § 36-2161(A)(15);
  4. Names of individuals who observed the incident;
  5. Action taken by patient care staff members and employees during the incident and immediately following the incident; and
  6. Action taken by the patient care staff members and employees to prevent the incident from occurring in the future.
- C.** A medical director shall ensure that the incident report is:
1. Submitted to the Department and, if the incident involved a licensed individual, the applicable professional licensing board within 10 calendar days after the date of the notification in subsection (A); and
  2. Maintained on the premises for at least two years after the date of the incident.

### **R9-10-1509. Abortion Procedures**

- A.** A medical director shall ensure that a medical evaluation of a patient is conducted before the patient's abortion is performed that includes:
1. A medical history including:
    - a. Allergies to medications, antiseptic solutions, or latex;
    - b. Obstetrical and gynecological history;
    - c. Past surgeries;
    - d. Medication the patient is currently taking; and
    - e. Other medical conditions;

2. A physical examination, performed by a physician that includes a bimanual examination to estimate uterine size and palpation of adnexa;
  3. The following laboratory tests:
    - a. A urine or blood test to determine pregnancy;
    - b. Rh typing, unless the patient provides written documentation of blood type acceptable to the physician;
    - c. Anemia screening; and
    - d. Other laboratory tests recommended by the physician or medical director on the basis of the physical examination; and
  4. An ultrasound imaging study of the fetus, performed as required in A.R.S. §§ 36-2156 and 36-2301.02(A).
- B.** If the medical evaluation indicates a patient is Rh negative, a medical director shall ensure that:
1. The patient receives information from a physician on this condition;
  2. The patient is offered RhO(d) immune globulin within 72 hours after the abortion procedure;
  3. If a patient refuses RhO(d) immune globulin, the patient signs and dates a form acknowledging the patient's condition and refusing the RhO(d) immune globulin;
  4. The form in subsection (B)(3) is maintained in the patient's medical record; and
  5. If a patient refuses RhO(d) immune globulin or if a patient refuses to sign and date an acknowledgment and refusal form, the physician documents the patient's refusal in the patient's medical record.
- C.** A physician shall estimate the gestational age of the fetus, based on one of the following criteria, and record the estimated gestational age in the patient's medical record:
1. Ultrasound measurements of the biparietal diameter, length of femur, abdominal circumference, visible pregnancy sac, or crown-rump length or a combination of these; or
  2. The date of the last menstrual period or the date of fertilization and a bimanual examination of the patient.
- D.** A medical director shall ensure that:
1. The ultrasound of a patient required in subsection (A)(4) is performed by an individual who meets the requirements in R9-10-1506(3);
  2. An ultrasound estimate of gestational age of a fetus is performed using methods and tables or charts in a publication distributed nationally that contains peer-reviewed medical information, such as medical information derived from a publication describing research in obstetrics and gynecology or in diagnostic imaging;

3. An original patient ultrasound image is:
    - a. Interpreted by a physician, and
    - b. Maintained in the patient's medical record in either electronic or paper form; and
  4. If requested by the patient, the ultrasound image is reviewed with the patient by a physician, physician assistant, registered nurse practitioner, or registered nurse.
- E.** A medical director shall ensure that before an abortion is performed on a patient:
1. Written consent, that meets the requirements in A.R.S. § 36-2152 or 36-2153, as applicable, and A.R.S. § 36-2158 is signed and dated by the patient or the patient's representative; ~~and~~
  2. Information is provided to the patient on the abortion procedure, including alternatives, risks, and potential complications;
  3. Information specified in A.R.S. § 36-2161(A)(12) is requested from the patient; and
  4. If applicable, information required in A.R.S. § 36-2161(C) is provided to the patient.
- F.** A medical director shall ensure that an abortion is performed according to the abortion clinic's policies and procedures and this Article.
- G.** A medical director shall ensure that:
1. A patient care staff member monitors a patient's vital signs throughout an abortion procedure to ensure the patient's health and safety;
  2. Intravenous access is established and maintained on a patient undergoing an abortion after the first trimester unless the physician determines that establishing intravenous access is not appropriate for the particular patient and documents that fact in the patient's medical record;
  3. If an abortion procedure is performed at or after 20 weeks gestational age, a patient care staff member qualified in neonatal resuscitation, other than the physician performing the abortion procedure, is in the room in which the abortion procedure takes place before the delivery of the fetus; and
  4. If a fetus is delivered alive:
    - a. Resuscitative measures, including the following, are used to support life:
      - i. Warming and drying of the fetus,
      - ii. Clearing secretions from and positioning the airway of the fetus,
      - iii. Administering oxygen as needed to the fetus, and
      - iv. Assessing and monitoring the cardiopulmonary status of the fetus;
    - b. A determination is made of whether the fetus is a viable fetus;
    - c. A viable fetus is provided treatment to support life;

- d. A viable fetus is transferred as required in R9-10-1510; and
- e. Resuscitative measures and the transfer, as applicable, are documented.

**H.** To ensure a patient's health and safety, a medical director shall ensure that following the abortion procedure:

- 1. A patient's vital signs and bleeding are monitored by:
  - a. A physician;
  - b. A physician assistant;
  - c. A registered nurse practitioner;
  - d. A nurse; or
  - e. If a physician is able to provide direct supervision, as defined in A.R.S. § 32-1401 or A.R.S. § 32-1800, as applicable, to a medical assistant, as defined in A.R.S. § 32-1401 or A.R.S. § 32-1800, a medical assistant under the direct supervision of the physician; and
- 2. A patient remains in the recovery room or recovery area until a physician, physician assistant, registered nurse practitioner, or nurse examines the patient and determines that the patient's medical condition is stable and the patient is ready to leave the recovery room or recovery area.

**I.** A medical director shall ensure that follow-up care:

- 1. For a surgical abortion is offered to a patient that includes:
  - a. With a patient's consent, a telephone call made to the patient to assess the patient's recovery:
    - i. By a patient care staff member other than a surgical assistant; and
    - ii. Within 24 hours after the patient's discharge following a surgical abortion; and
  - b. A follow-up visit scheduled, if requested, no more than 21 calendar days after the abortion that includes:
    - i. A physical examination,
    - ii. A review of all laboratory tests as required in subsection (A)(3), and
    - iii. A urine pregnancy test;
- 2. For a medication abortion includes a follow-up visit, scheduled between seven and 21 calendar days after the initial dose of a substance used to induce an abortion, that includes:
  - a. A urine pregnancy test, and
  - b. An assessment of the degree of bleeding; and

3. Is documented in the patient's medical record, including:
    - a. A patient's acceptance or refusal of a follow-up visit following a surgical abortion;
    - b. If applicable, the results of the follow-up visit; and
    - c. If applicable, whether the patient consented to a telephone call and, if so, whether the patient care staff member making the telephone call to the patient:
      - i. Spoke with the patient about the patient's recovery, or
      - ii. Was unable to speak with the patient.
- J.** If a continuing pregnancy is suspected as a result of the follow-up visit in subsection (I)(1)(b) or (I)(2), a physician who performs abortions shall be consulted.

## **ARTICLE 1. GENERAL**

### **R9-10-119. Abortion Reporting**

- A.** A licensed health care institution where abortions are performed shall submit to the Department, in a Department-provided format and according to A.R.S. § 36-2161(B) and (C), a report that contains the information required in A.R.S. § 36-2161(A) and the following:
1. The final disposition of the fetal tissue from the abortion; and
  2. Except as provided in subsection (B), if custody of the fetal tissue is transferred to another person or persons:
    - a. The name and address of the person or persons accepting custody of the fetal tissue,
    - b. The amount of any compensation received by the licensed health care institution for the transferred fetal tissue, and
    - c. Whether a patient provided informed consent for the transfer of custody of the fetal tissue.
- B.** A licensed health care institution where abortions are performed is not required to include the information specified in subsections (A)(2)(a) through (c) in the report required in subsection (A) if the licensed health care institution where abortions are performed:
1. Transfers custody of the fetal tissue:
    - a. To a funeral establishment, as defined in A.R.S. § 32-1301;
    - b. To a crematory, as defined in A.R.S. § 32-1301; or
    - c. According to requirements in A.A.C. R18-13-1406, A.A.C. R18-13-1407, and A.A.C. R18-13-1408; or
  2. Complies with requirements in A.A.C. R18-13-1405.
- C.** For purposes of this Section, the following definition applies: “Fetal tissue” means cells, or groups of cells with a specific function, obtained from an aborted human embryo or fetus.

## ARTICLE 15. ABORTION CLINICS

### **R9-10-1501. Definitions**

In addition to the definitions in A.R.S. §§ 36-401, 36-449.01, 36-449.03, 36-2151, 36-2158, and 36-2301.01 and R9-10-101, the following definitions apply in this Article, unless otherwise specified:

1. “Admitting privileges” means permission extended by a hospital to a physician to allow admission of an individual as an inpatient, as defined in R9-10-201:
  - a. By the patient’s own physician, or
  - b. Through a written agreement between the patient’s physician and another physician that states that the other physician has permission to personally admit the patient to a hospital in this state and agrees to do so.
2. “Course” means training or education, including hands-on practice under the supervision of a physician.
3. “Employee” means an individual who receives compensation from a licensee, but does not provide medical services, nursing services, or health-related services.
4. “First trimester” means 1 through 14 weeks as measured from the first day of the last menstrual period or 1 through 12 weeks as measured from the date of fertilization.
5. “Incident” means an abortion-related patient death or serious injury to a patient or fetus delivered alive.
6. “Local” means under the jurisdiction of a city or county in Arizona.
7. “Medical director” means a physician who is responsible for the direction of the medical services, nursing services, and health-related services provided to patients at an abortion clinic.
8. “Medical evaluation” means obtaining a patient’s medical history, performing a physical examination of a patient’s body, and conducting laboratory tests as provided in R9-10-1509.
9. “Monitor” means to observe and document, continuously or intermittently, the values of certain physiologic variables on a patient such as pulse, blood pressure, oxygen saturation, respiration, and blood loss.
10. “Neonatal resuscitation” means procedures to assist in maintaining the life of a fetus delivered alive, as described in A.R.S. § 36-2301(D)(3).
11. “Patient” means a female receiving medical services, nursing services, or health-related services related to an abortion.
12. “Patient care staff member” means a physician, registered nurse practitioner, nurse, physician assistant, or surgical assistant who provides medical services, nursing services, or health-related services to a patient.

13. “Patient transfer” means relocating a patient requiring medical services from an abortion clinic to another health care institution.
14. “Personally identifiable patient information” means:
  - a. The name, address, telephone number, e-mail address, Social Security number, and birth date of:
    - i. The patient,
    - ii. The patient’s representative,
    - iii. The patient’s emergency contact,
    - iv. The patient’s children,
    - v. The patient’s spouse,
    - vi. The patient’s sexual partner, and
    - vii. Any other individual identified in the patient’s medical record other than patient care staff;
  - b. The patient’s place of employment;
  - c. The patient’s referring physician;
  - d. The patient’s insurance carrier or account;
  - e. Any “individually identifiable health information” as proscribed in 45 CFR 164-514; and
  - f. Any other information in the patient’s medical record that could reasonably lead to the identification of the patient.
15. “Personnel” means patient care staff members, employees, and volunteers.
16. “Serious injury” means a life-threatening physical condition related to an abortion procedure.
17. “Surgical assistant” means an individual who is not licensed as a physician, physician assistant, registered nurse practitioner, or nurse who performs duties as directed by a physician, physician assistant, registered nurse practitioner, or nurse.
18. “Volunteer” means an individual who, without compensation, performs duties as directed by a patient care staff member at an abortion clinic.

**R9-10-1502. Application and Documentation Submission Requirements**

- A.** An applicant shall submit an application for licensure that meets the requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1.
- B.** A licensee shall submit to the Department the documentation required according to A.R.S. § 36-449.02(B) with the applicable fees required in R9-10-106(C).

**R9-10-1503. Administration**

- A. A licensee is responsible for the organization and management of an abortion clinic.
- B. A licensee shall:
  - 1. Adopt policies and procedures for the administration and operation of an abortion clinic;
  - 2. Designate a medical director who:
    - a. Is licensed according to A.R.S. Title 32, Chapter 13, 17, or 29; and
    - b. May be the same individual as the licensee;
  - 3. Ensure the following documents are conspicuously posted on the premises:
    - a. Current abortion clinic license issued by the Department,
    - b. Current telephone number and address of the unit in the Department responsible for licensing the abortion clinic,
    - c. Evacuation map, and
    - d. Signs that comply with A.R.S. § 36-2153(H); and
  - 4. Except as specified in R9-10-1512(D)(4), ensure that documentation required by this Article is provided to the Department within two hours after a Department request.
- C. A medical director shall ensure written policies and procedures are established, documented, and implemented to protect the health and safety of a patient including:
  - 1. Personnel qualifications, duties, and responsibilities;
  - 2. Individuals qualified to provide counseling in the abortion clinic and the amount and type of training required for an individual to provide counseling;
  - 3. If the abortion clinic performs an abortion procedure at or after 20 weeks gestational age:
    - a. Individuals qualified in neonatal resuscitation and the amount and type of training required for an individual to provide neonatal resuscitation, and
    - b. Designation of an individual to arrange the transfer to a hospital of a fetus delivered alive;
  - 4. Verification of the competency of the physician performing an abortion according to R9-10-1506;
  - 5. The storage, administration, accessibility, disposal, and documentation of a medication or controlled substance;
  - 6. Accessibility and security of medical records;
  - 7. Abortion procedures including:
    - a. Recovery and follow-up care;
    - b. The minimum length of time a patient remains in the recovery room or area based on:
      - i. The type of abortion performed,

- ii. The estimated gestational age of the fetus,
      - iii. The type and amount of medication administered, and
      - iv. The physiologic signs including vital signs and blood loss; and
    - c. If the abortion clinic performs an abortion procedure at or after 20 weeks gestational age, the requirements in A.R.S. § 36-2301(D);
  - 8. Infection control including methods of sterilizing equipment and supplies;
  - 9. Medical emergencies; and
  - 10. Patient discharge and patient transfer.
- D.** For an abortion clinic that is not in substantial compliance or that is in substantial compliance but refuses to carry out a plan of correction acceptable to the Department, the Department may take enforcement action as specified in R9-10-111.

**R9-10-1504. Quality Management**

A medical director shall ensure that:

- 1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to patients;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the licensee;
- 2. A documented report is submitted to the licensee that includes:
  - a. An identification of each concern about the delivery of services related to patient care, and
  - b. Any changes made or actions taken as a result of the identification of a concern about the delivery of services related to patient care; and
- 3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the licensee.

**R9-10-1505. Incident Reporting**

- A.** A licensee shall ensure that the Department is notified of an incident as follows:
  - 1. For the death of a patient, verbal notification the next working day;

2. For a fetus delivered alive, verbal notification the next working day; and
  3. For a serious injury of a patient or viable fetus, written notification within 10 calendar days after the date of the serious injury.
- B.** A medical director shall conduct an investigation of an incident and document an incident report that includes:
1. The date and time of the incident,
  2. The name of the patient,
  3. A description of the incident,
  4. Names of individuals who observed the incident,
  5. Action taken by patient care staff members and employees during the incident and immediately following the incident, and
  6. Action taken by the patient care staff members and employees to prevent the incident from occurring in the future.
- C.** A medical director shall ensure that the incident report is:
1. Submitted to the Department and, if the incident involved a licensed individual, the applicable professional licensing board within 10 calendar days after the date of the notification in subsection (A); and
  2. Maintained on the premises for at least two years after the date of the incident.

**R9-10-1506. Personnel Qualifications and Records**

A licensee shall ensure that:

1. A physician who performs an abortion demonstrates to the medical director that the physician is competent to perform an abortion by:
  - a. The submission of documentation of education and experience, and
  - b. Observation by or interaction with the medical director;
2. Surgical assistants and volunteers who provide counseling and patient advocacy receive training in these specific responsibilities and any other responsibilities assigned and that documentation of the training received is maintained in the individual's personnel file;
3. An individual who performs an ultrasound provides documentation that the individual is:
  - a. A physician;
  - b. A physician assistant, registered nurse practitioner, or nurse who completed a course in performing ultrasounds under the supervision of a physician; or
  - c. An individual who:
    - i. Completed a course in performing ultrasounds under the supervision of a physician, and

- ii. Is not otherwise precluded by law from performing an ultrasound;
  4. An individual has completed a course for the type of ultrasound the individual performs;
  5. If the abortion clinic performs an abortion procedure at or after 20 weeks gestational age, an individual who is available to perform neonatal resuscitation provides documentation that the individual:
    - a. Is a:
      - i. Physician,
      - ii. Physician assistant,
      - iii. Registered nurse practitioner, or
      - iv. Nurse; and
    - b. Has completed a course in performing neonatal resuscitation that is consistent with training provided by the American Academy of Pediatrics Neonatal Resuscitation Program and includes:
      - i. Instruction in the use of resuscitation devices for positive-pressure ventilation, tracheal intubation, medications that may be necessary for neonatal resuscitation and their administration, and resuscitation of pre-term newborns; and
      - ii. Assessment of the individual's skill in applying the information provided through the instruction in subsection (5)(b)(i);
6. A personnel file for each patient care staff member and each volunteer is maintained either electronically or in writing and includes:
  - a. The individual's name and position title;
  - b. The first and, if applicable, the last date of employment or volunteer service;
  - c. Verification of qualifications, training, or licensure, as applicable;
  - d. Documentation of cardiopulmonary resuscitation certification, as applicable;
  - e. Documentation of verification of competency, as required in subsection (1), and signed and dated by the medical director;
  - f. Documentation of training for surgical assistants and volunteers;
  - g. Documentation of completion of a course as required in subsection (3), for an individual performing ultrasounds; and
  - h. Documentation of competency to perform neonatal resuscitation, as required in subsection (5), if applicable; and
7. Personnel files are maintained on the premises for at least two years after the ending date of employment or volunteer service.

**R9-10-1507. Staffing Requirements**

- A.** A licensee shall ensure that there is a sufficient number of patient care staff members and employees to:
1. Meet the requirements of this Article,
  2. Ensure the health and safety of a patient, and
  3. Meet the needs of a patient based on the patient's medical evaluation.
- B.** A licensee shall ensure that:
1. A patient care staff member other than a surgical assistant, who is current in cardiopulmonary resuscitation certification, is on the premises until all patients are discharged;
  2. A physician, with admitting privileges at a health care institution that is classified by the director as a hospital according to A.R.S. § 36-405(B), remains on the premises of the abortion clinic until all patients who received a medication abortion are stable and ready to leave;
  3. A physician, with admitting privileges at a health care institution that is classified by the director as a hospital according to A.R.S. § 36-405(B) and that is within 30 miles of the abortion clinic by road, as defined in A.R.S. § 17-451, remains on the abortion clinic's premises until all patients who received a surgical abortion are stable and discharged from the recovery room;
  4. A patient care staff member is on the premises to comply with R9-10-1509(H); and
  5. If the abortion clinic performs an abortion procedure at or after 20 weeks gestational age, a patient care staff member qualified according to policies and procedures to perform neonatal resuscitation is available for the abortion procedure.

**R9-10-1508. Patient Rights**

A licensee shall ensure that a patient is afforded the following rights, and is informed of these rights:

1. To refuse treatment, or withdraw consent for treatment;
2. To have medical records kept confidential; and
3. To be informed of:
  - a. Billing procedures and financial liability before abortion services are provided;
  - b. Proposed medical or surgical procedures, associated risks, possible complications, and alternatives;
  - c. Counseling services that are provided on the premises;
  - d. The right to review the ultrasound results with a physician, a physician assistant, a registered nurse practitioner, or a registered nurse before the abortion procedure; and

- e. The right to receive a print of the ultrasound image.

**R9-10-1509. Abortion Procedures**

**A.** A medical director shall ensure that a medical evaluation of a patient is conducted before the patient's abortion is performed that includes:

1. A medical history including:
  - a. Allergies to medications, antiseptic solutions, or latex;
  - b. Obstetrical and gynecological history;
  - c. Past surgeries;
  - d. Medication the patient is currently taking; and
  - e. Other medical conditions;
2. A physical examination, performed by a physician that includes a bimanual examination to estimate uterine size and palpation of adnexa;
3. The following laboratory tests:
  - a. A urine or blood test to determine pregnancy;
  - b. Rh typing, unless the patient provides written documentation of blood type acceptable to the physician;
  - c. Anemia screening; and
  - d. Other laboratory tests recommended by the physician or medical director on the basis of the physical examination; and
4. An ultrasound imaging study of the fetus, performed as required in A.R.S. §§ 36-2156 and 36-2301.02(A).

**B.** If the medical evaluation indicates a patient is Rh negative, a medical director shall ensure that:

1. The patient receives information from a physician on this condition;
2. The patient is offered RhO(d) immune globulin within 72 hours after the abortion procedure;
3. If a patient refuses RhO(d) immune globulin, the patient signs and dates a form acknowledging the patient's condition and refusing the RhO(d) immune globulin;
4. The form in subsection (B)(3) is maintained in the patient's medical record; and
5. If a patient refuses RhO(d) immune globulin or if a patient refuses to sign and date an acknowledgment and refusal form, the physician documents the patient's refusal in the patient's medical record.

**C.** A physician shall estimate the gestational age of the fetus, based on one of the following criteria, and record the estimated gestational age in the patient's medical record:

1. Ultrasound measurements of the biparietal diameter, length of femur, abdominal circumference, visible pregnancy sac, or crown-rump length or a combination of these; or

2. The date of the last menstrual period or the date of fertilization and a bimanual examination of the patient.
- D.** A medical director shall ensure that:
1. The ultrasound of a patient required in subsection (A)(4) is performed by an individual who meets the requirements in R9-10-1506(3);
  2. An ultrasound estimate of gestational age of a fetus is performed using methods and tables or charts in a publication distributed nationally that contains peer-reviewed medical information, such as medical information derived from a publication describing research in obstetrics and gynecology or in diagnostic imaging;
  3. An original patient ultrasound image is:
    - a. Interpreted by a physician, and
    - b. Maintained in the patient's medical record in either electronic or paper form; and
  4. If requested by the patient, the ultrasound image is reviewed with the patient by a physician, physician assistant, registered nurse practitioner, or registered nurse.
- E.** A medical director shall ensure that before an abortion is performed on a patient:
1. Written consent, that meets the requirements in A.R.S. § 36-2152 or 36-2153, as applicable, and A.R.S. § 36-2158, is signed and dated by the patient or the patient's representative; and
  2. Information is provided to the patient on the abortion procedure, including alternatives, risks, and potential complications.
- F.** A medical director shall ensure that an abortion is performed according to the abortion clinic's policies and procedures and this Article.
- G.** A medical director shall ensure that:
1. A patient care staff member monitors a patient's vital signs throughout an abortion procedure to ensure the patient's health and safety;
  2. Intravenous access is established and maintained on a patient undergoing an abortion after the first trimester unless the physician determines that establishing intravenous access is not appropriate for the particular patient and documents that fact in the patient's medical record;
  3. If an abortion procedure is performed at or after 20 weeks gestational age, a patient care staff member qualified in neonatal resuscitation, other than the physician performing the abortion procedure, is in the room in which the abortion procedure takes place before the delivery of the fetus; and
  4. If a fetus is delivered alive:
    - a. Resuscitative measures, including the following, are used to support life:
      - i. Warming and drying of the fetus,
      - ii. Clearing secretions from and positioning the airway of the fetus,

- iii. Administering oxygen as needed to the fetus, and
- iv. Assessing and monitoring the cardiopulmonary status of the fetus;
- b. A determination is made of whether the fetus is a viable fetus;
- c. A viable fetus is provided treatment to support life;
- d. A viable fetus is transferred as required in R9-10-1510; and
- e. Resuscitative measures and the transfer, as applicable, are documented.

**H.** To ensure a patient's health and safety, a medical director shall ensure that following the abortion procedure:

- 1. A patient's vital signs and bleeding are monitored by:
  - a. A physician;
  - b. A physician assistant;
  - c. A registered nurse practitioner;
  - d. A nurse; or
  - e. If a physician is able to provide direct supervision, as defined in A.R.S. § 32-1401 or A.R.S. § 32-1800, as applicable, to a medical assistant, as defined in A.R.S. § 32-1401 or A.R.S. § 32-1800, a medical assistant under the direct supervision of the physician; and
- 2. A patient remains in the recovery room or recovery area until a physician, physician assistant, registered nurse practitioner, or nurse examines the patient and determines that the patient's medical condition is stable and the patient is ready to leave the recovery room or recovery area.

**I.** A medical director shall ensure that follow-up care:

- 1. For a surgical abortion is offered to a patient that includes:
  - a. With a patient's consent, a telephone call made to the patient to assess the patient's recovery:
    - i. By a patient care staff member other than a surgical assistant; and
    - ii. Within 24 hours after the patient's discharge following a surgical abortion; and
  - b. A follow-up visit scheduled, if requested, no more than 21 calendar days after the abortion that includes:
    - i. A physical examination,
    - ii. A review of all laboratory tests as required in subsection (A)(3), and
    - iii. A urine pregnancy test;
- 2. For a medication abortion includes a follow-up visit, scheduled between seven and 21 calendar days after the initial dose of a substance used to induce an abortion, that includes:

- a. A urine pregnancy test, and
  - b. An assessment of the degree of bleeding; and
3. Is documented in the patient's medical record, including:
- a. A patient's acceptance or refusal of a follow-up visit following a surgical abortion;
  - b. If applicable, the results of the follow-up visit; and
  - c. If applicable, whether the patient consented to a telephone call and, if so, whether the patient care staff member making the telephone call to the patient:
    - i. Spoke with the patient about the patient's recovery, or
    - ii. Was unable to speak with the patient.
- J.** If a continuing pregnancy is suspected as a result of the follow-up visit in subsection (I)(1)(b) or (I)(2), a physician who performs abortions shall be consulted.

**R9-10-1510. Patient Transfer and Discharge**

- A.** A medical director shall ensure that:
- 1. For a patient:
    - a. A patient is transferred to a hospital for an emergency involving the patient;
    - b. A patient transfer is documented in the patient's medical record; and
    - c. Documentation of a medical evaluation, treatment provided, and laboratory and diagnostic information is transferred with a patient; and
  - 2. For a viable fetus:
    - a. A viable fetus requiring emergency care is transferred to a hospital,
    - b. The transfer of a viable fetus is documented in the viable fetus's medical record, and
    - c. Documentation of an assessment of cardiopulmonary function and treatment provided to a viable fetus is transferred with the viable fetus.
- B.** A medical director shall ensure that before a patient is discharged:
- 1. A physician signs the patient's discharge order; and
  - 2. A patient receives follow-up instructions at discharge that include:
    - a. Signs of possible complications,
    - b. When to access medical services in response to complications,
    - c. A telephone number of an individual or entity to contact for medical emergencies,
    - d. Information and precautions for resuming vaginal intercourse after the abortion, and
    - e. Information specific to the patient's abortion or condition.

**R9-10-1511. Medications and Controlled Substances**

A medical director shall ensure that:

1. The abortion clinic complies with the requirements for medications and controlled substances in A.R.S. Title 32, Chapter 18, and A.R.S. Title 36, Chapter 27;
2. A medication is administered in compliance with an order from a physician, physician assistant, registered nurse practitioner, or as otherwise provided by law;
3. A medication is administered to a patient or to a viable fetus by a physician or as otherwise provided by law;
4. Medications and controlled substances are maintained in a locked area on the premises;
5. Only personnel designated by policies and procedures have access to the locked area containing medications and controlled substances;
6. Expired, mislabeled, or unusable medications and controlled substances are disposed of according to policies and procedures;
7. A medication error or an adverse reaction, including any actions taken in response to the medication error or adverse reaction, is immediately reported to the medical director and licensee, and recorded in the patient's medical record;
8. Medication information for a patient is maintained in the patient's medical record and contains:
  - a. The patient's name, age, and weight;
  - b. The medications the patient is currently taking;
  - c. Allergies or sensitivities to medications, antiseptic solutions, or latex; and
  - d. If medication is administered to the patient:
    - i. The date and time of administration;
    - ii. The name, strength, dosage form, amount of medication, and route of administration; and
    - iii. The identification and signature of the individual administering the medication; and
9. If administered to a fetus delivered alive, the following are documented in the fetus's medical record:
  - a. The date and time of oxygen administration;
  - b. The amount and flow rate of the oxygen;
  - c. The identification and signature of the individual administering the oxygen; and
  - d. For a viable fetus:
    - i. The date and time of medication administration;
    - ii. The name, strength, dosage form, amount of medication, and route of administration; and
    - iii. The identification and signature of the individual administering the

medication.

**R9-10-1512. Medical Records**

- A.** A licensee shall ensure that a medical record is established and maintained for a patient that contains:
1. Patient identification including:
    - a. The patient's name, address, and date of birth;
    - b. The designated patient's representative, if applicable; and
    - c. The name and telephone number of an individual to contact in an emergency;
  2. The patient's medical history required in R9-10-1509(A)(1);
  3. The patient's physical examination required in R9-10-1509(A)(2);
  4. The laboratory test results required in R9-10-1509(A)(3);
  5. The ultrasound results, including the original print, required in R9-10-1509(A)(4);
  6. The physician's estimated gestational age of the fetus required in R9-10-1509(C);
  7. Each consent form signed by the patient or the patient's representative;
  8. Orders issued by a physician, physician assistant, or registered nurse practitioner;
  9. A record of medical services, nursing services, and health-related services provided to the patient;
  10. The patient's medication information;
  11. Documentation related to follow-up care specified in R9-10-1509(I); and
  12. If the abortion procedure was performed at or after 20 weeks gestational age and the fetus was not delivered alive, documentation from the physician and other patient care staff member present certifying that the fetus was not delivered alive.
- B.** A licensee shall ensure that a medical record is established and maintained for a fetus delivered alive that contains:
1. An identification of the fetus, including:
    - a. The name of the patient from whom the fetus was delivered alive, and
    - b. The date the fetus was delivered alive;
  2. Orders issued by a physician, physician assistant, or registered nurse practitioner;
  3. A record of medical services, nursing services, and health-related services provided to the fetus delivered alive;
  4. If applicable, information about medication administered to the fetus delivered alive; and
  5. If the abortion procedure was performed at or after 20 weeks gestational age:
    - a. Documentation of the requirements in R9-10-1509(G)(4); and
    - b. If the fetus had a lethal fetal condition, the results of the confirmation of the lethal fetal condition.

**C.** A licensee shall ensure that:

1. A medical record is accessible only to the Department or personnel authorized by policies and procedures;
2. Medical record information is confidential and released only with the written informed consent of a patient or the patient's representative or as otherwise permitted by law;
3. A medical record is protected from loss, damage, or unauthorized use and is maintained and accessible for at least seven years after the date of an adult patient's discharge or if the patient is a child, either for at least three years after the child's 18th birthday or for at least seven years after the patient's discharge, whichever date occurs last;
4. A medical record is maintained at the abortion clinic for at least six months after the date of the patient's discharge; and
5. Vital records and vital statistics are retained according to A.R.S. § 36-343.

**D.** If the Department requests patient medical records for review, the licensee:

1. Is not required to produce any patient medical records created or prepared by a referring physician's office;
2. May provide patient medical records to the Department either in paper or in an electronic format that is acceptable to the Department;
3. Shall provide the Department with the following patient medical records related to medical services associated with an abortion, including any follow-up visits to the abortion clinic in connection with the abortion:
  - a. The patient's medical history required in R9-10-1509(A)(1);
  - b. The patient's physical examination required in R9-10-1509(A)(2);
  - c. The laboratory test results required in R9-10-1509(A)(3);
  - d. The physician's estimate of gestational age of the fetus required in R9-10-1509(C);
  - e. The ultrasound results required in R9-10-1509(D)(2);
  - f. Each consent form signed by the patient or the patient's representative;
  - g. Orders issued by a physician, physician assistant, or registered nurse practitioner;
  - h. A record of medical services, nursing services, and health-related services provided to the patient; and
  - i. The patient's medication information;
4. If the Department's request is in connection with a licensing or compliance inspection:
  - a. Is not required to produce any patient medical records associated with an abortion that occurred before the licensing inspection or a previous compliance inspection of the abortion clinic; and
  - b. Shall:

- i. Redact only personally identifiable patient information from the patient medical records before the licensee discloses the patient medical records to the Department;
    - ii. Upon request by the Department, code the requested patient medical records by a means that allows the Department to track all patient medical records related to a specific patient without the personally identifiable patient information; and
    - iii. Unless the Department and the licensee agree otherwise, provide redacted copies of patient medical records to the Department:
      - (1) For one to ten patients, within two working days after the request, and
      - (2) For every additional five patients, within an additional two working days; and
  - 5. If the Department's request is in connection with a complaint investigation, shall:
    - a. Not redact patient information from the patient medical records before the licensee discloses the patient medical records to the Department; and
    - b. Ensure the patient medical records include:
      - i. The patient's name, address, and date of birth;
      - ii. The patient's representative, if applicable; and
      - iii. The name and telephone number of an individual to contact in an emergency.
- E.** A medical director shall ensure that only personnel authorized by policies and procedures, records or signs an entry in a medical record and:
- 1. An entry in a medical record is dated and legible;
  - 2. An entry is authenticated by:
    - a. A signature; or
    - b. An individual's initials if the individual's signature already appears in the medical record;
  - 3. An entry is not changed after it has been recorded, but additional information related to an entry may be recorded in the medical record;
  - 4. When a verbal or telephone order is entered in the medical record, the entry is authenticated within 21 calendar days by the individual who issued the order;
  - 5. If a rubber-stamp signature or an electronic signature is used:
    - a. An individual's rubber stamp or electronic signature is not used by another individual;

- b. The individual who uses a rubber stamp or electronic signature signs a statement that the individual is responsible for the use of the rubber stamp or the electronic signature; and
  - c. The signed statement is included in the individual's personnel record; and
  - 6. If an abortion clinic maintains medical records electronically, the medical director shall ensure the date and time of an entry is recorded by the computer's internal clock.
- F.** As required by A.R.S. § 36-449.03(J), the Department shall not release any personally identifiable patient or physician information.

**R9-10-1513. Environmental and Safety Standards**

A licensee shall ensure that:

- 1. The premises:
  - a. Provide lighting and ventilation to ensure the health and safety of a patient,
  - b. Are maintained in a clean condition,
  - c. Are free from a condition or situation that may cause a patient to suffer physical injury,
  - d. Are maintained free from insects and vermin, and
  - e. Are smoke-free;
- 2. A warning notice is placed at the entrance to a room or area where oxygen is in use;
- 3. Soiled linen and clothing are kept:
  - a. In a covered container, and
  - b. Separate from clean linen and clothing;
- 4. Personnel wash hands after each direct patient contact and after handling soiled linen, soiled clothing, or biohazardous medical waste;
- 5. A written emergency plan is established, documented, and implemented that includes procedures for protecting the health and safety of patients and other individuals in a fire, natural disaster, loss of electrical power, or threat or incidence of violence;
- 6. An evacuation drill is conducted at least once every six months that includes all personnel on the premises on the day of the evacuation drill; and
- 7. Documentation of the evacuation drill is maintained on the premises for at least one year after the date of the evacuation drill and includes:
  - a. The date and time of the evacuation drill, and
  - b. The names of personnel participating in the evacuation drill.

## **R9-10-1514. Equipment Standards**

A licensee shall ensure that:

1. Equipment and supplies are maintained in a:
  - a. Clean condition, and
  - b. Quantity sufficient to meet the needs of patients present in the abortion clinic;
2. Equipment to monitor vital signs is in each room in which an abortion is performed;
3. A surgical or gynecologic examination table is used for an abortion;
4. The following equipment and supplies are available in the abortion clinic:
  - a. Equipment to measure blood pressure;
  - b. A stethoscope;
  - c. A scale for weighing a patient;
  - d. Supplies for obtaining specimens and cultures and for laboratory tests; and
  - e. Equipment and supplies for use in a medical emergency including:
    - i. Ventilatory assistance equipment,
    - ii. Oxygen source,
    - iii. Suction apparatus, and
    - iv. Intravenous fluid equipment and supplies; and
  - f. Ultrasound equipment;
5. In addition to the requirements in subsection (4), the following equipment is available for an abortion procedure performed after the first trimester:
  - a. Drugs to support cardiopulmonary function of a patient, and
  - b. Equipment to monitor the cardiopulmonary status of a patient;
6. In addition to the requirements in subsections (4) and (5), if the abortion clinic performs an abortion procedure at or after 20 weeks gestational age, the following equipment is available for the abortion procedure:
  - a. Equipment to provide warmth and drying of a fetus delivered alive,
  - b. Equipment necessary to clear secretions from and position the airway of a fetus delivered alive,
  - c. Equipment necessary to administer oxygen to a fetus delivered alive,
  - d. Equipment to assess and monitor the cardiopulmonary status of a fetus delivered alive, and
  - e. Drugs to support cardiopulmonary function in a viable fetus;
7. Equipment and supplies are clean and, if applicable, sterile before each use;
8. Equipment required in this Section is maintained in working order, tested and calibrated at least once every 12 months or according to the manufacturer's recommendations, and used

according to the manufacturer's recommendations; and

9. Documentation of each equipment test, calibration, and repair is maintained on the premises for at least 12 months after the date of the testing, calibration, or repair and provided to the Department for review within two hours after the Department requests the documentation.

**R9-10-1515. Physical Plant Standards**

- A. A licensee shall ensure that an abortion clinic complies with all local building codes, ordinances, fire codes, and zoning requirements. If there are no local building codes, ordinances, fire codes, or zoning requirements, the abortion clinic shall comply with the applicable codes and standards incorporated by reference in A.A.C. R9-1-412 that were in effect on the date the abortion clinic's architectural plans and specifications were submitted to the Department for approval.
- B. A licensee shall ensure that an abortion clinic provides areas or rooms:
  1. That provide privacy for:
    - a. A patient's interview, medical evaluation, and counseling;
    - b. A patient to dress; and
    - c. Performing an abortion procedure;
  2. For personnel to dress;
  3. With a sink and a flushable toilet in working order;
  4. For cleaning and sterilizing equipment and supplies;
  5. For storing medical records;
  6. For storing equipment and supplies;
  7. For hand washing before the abortion procedure; and
  8. For a patient recovering after an abortion.
- C. A licensee shall ensure that an abortion clinic has an emergency exit to accommodate a stretcher or gurney.

## Statutory Authority

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

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

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.
13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

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

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

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

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

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

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

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

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

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:
  - (a) Served at a noncommercial social event such as a potluck.
  - (b) Prepared at a cooking school that is conducted in an owner-occupied home.
  - (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
  - (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
  - (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
  - (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
  - (g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
  - (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.
6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall

prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

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

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

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

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

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

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

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

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction,

provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

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

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

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

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

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

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

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

#### **36-405. Powers and duties of the director**

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.
2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.
3. Prescribe the criteria for the licensure inspection process.
4. Prescribe standards for the selection of health care-related demonstration projects.
5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees, and fees for architectural plans and specifications reviews.
6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

#### **36-406. Powers and duties of the department**

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

#### **36-449.03. Abortion clinics; rules; civil penalties**

A. The director shall adopt rules for an abortion clinic's physical facilities. At a minimum these rules shall prescribe standards for:

1. Adequate private space that is specifically designated for interviewing, counseling and medical evaluations.

2. Dressing rooms for staff and patients.

3. Appropriate lavatory areas.

4. Areas for preprocedure hand washing.

5. Private procedure rooms.

6. Adequate lighting and ventilation for abortion procedures.

7. Surgical or gynecologic examination tables and other fixed equipment.

8. Postprocedure recovery rooms that are supervised, staffed and equipped to meet the patients' needs.

9. Emergency exits to accommodate a stretcher or gurney.

10. Areas for cleaning and sterilizing instruments.

11. Adequate areas for the secure storage of medical records and necessary equipment and supplies.

12. The display in the abortion clinic, in a place that is conspicuous to all patients, of the clinic's current license issued by the department.

B. The director shall adopt rules to prescribe abortion clinic supplies and equipment standards, including supplies and equipment that are required to be immediately available for use or in an emergency. At a minimum these rules shall:

1. Prescribe required equipment and supplies, including medications, required for the conduct, in an appropriate fashion, of any abortion procedure that the medical staff of the clinic anticipates performing and for monitoring the progress of each patient throughout the procedure and recovery period.

2. Require that the number or amount of equipment and supplies at the clinic is adequate at all times to assure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient.

3. Prescribe required equipment, supplies and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power.

4. Prescribe required equipment and supplies for required laboratory tests and requirements for protocols to calibrate and maintain laboratory equipment at the abortion clinic or operated by clinic staff.

5. Require ultrasound equipment.

6. Require that all equipment is safe for the patient and the staff, meets applicable federal standards and is checked annually to ensure safety and appropriate calibration.

C. The director shall adopt rules relating to abortion clinic personnel. At a minimum these rules shall require that:

1. The abortion clinic designate a medical director of the abortion clinic who is licensed pursuant to title 32, chapter 13, 17 or 29.

2. Physicians performing abortions are licensed pursuant to title 32, chapter 13 or 17, demonstrate competence in the procedure involved and are acceptable to the medical director of the abortion clinic.

3. A physician is available:

(a) For a surgical abortion who has admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B and that is within thirty miles of the abortion clinic.

(b) For a medication abortion who has admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B.

4. If a physician is not present, a registered nurse, nurse practitioner, licensed practical nurse or physician assistant is present and remains at the clinic when abortions are performed to provide postoperative monitoring and care, or monitoring and care after inducing a medication abortion, until each patient who had an abortion that day is discharged.

5. Surgical assistants receive training in counseling, patient advocacy and the specific responsibilities of the services the surgical assistants provide.

6. Volunteers receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the director for different types of volunteers based on their responsibilities.

D. The director shall adopt rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum these rules shall require:

1. A medical history, including the following:

(a) Reported allergies to medications, antiseptic solutions or latex.

(b) Obstetric and gynecologic history.

(c) Past surgeries.

2. A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa.

3. The appropriate laboratory tests, including:

(a) Urine or blood tests for pregnancy performed before the abortion procedure.

(b) A test for anemia.

(c) Rh typing, unless reliable written documentation of blood type is available.

(d) Other tests as indicated from the physical examination.

4. An ultrasound evaluation for all patients. The rules shall require that if a person who is not a physician performs an ultrasound examination, that person shall have documented evidence that the person completed a course in the operation of ultrasound equipment as prescribed in rule. The physician or other health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, including the probable gestational age of the fetus.

5. That the physician is responsible for estimating the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule and shall write the estimate in the patient's medical history. The physician shall keep original prints of each ultrasound examination of a patient in the patient's medical history file.

E. The director shall adopt rules relating to the abortion procedure. At a minimum these rules shall require:

1. That medical personnel is available to all patients throughout the abortion procedure.

2. Standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of fetal age as defined in rule.

3. Appropriate use of local anesthesia, analgesia and sedation if ordered by the physician.

4. The use of appropriate precautions, such as the establishment of intravenous access at least for patients undergoing second or third trimester abortions.

5. The use of appropriate monitoring of the vital signs and other defined signs and markers of the patient's status throughout the abortion procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room.

6. For abortion clinics performing or inducing an abortion for a woman whose unborn child is the gestational age of twenty weeks or more, minimum equipment standards to assist the physician in complying with section 36-2301. For the purposes of this paragraph, "abortion" and "gestational age" have the same meanings prescribed in section 36-2151.

F. The director shall adopt rules that prescribe minimum recovery room standards. At a minimum these rules shall require that:

1. For a surgical abortion, immediate postprocedure care, or care provided after inducing a medication abortion, consists of observation in a supervised recovery room for as long as the patient's condition warrants.

2. The clinic arrange hospitalization if any complication beyond the management capability of the staff occurs or is suspected.

3. A licensed health professional who is trained in the management of the recovery area and is capable of providing basic cardiopulmonary resuscitation and related emergency procedures remains on the premises of the abortion clinic until all patients are discharged.

4. For a surgical abortion, a physician with admitting privileges at a health care institution that is classified by the director as a hospital pursuant to section 36-405, subsection B and that is within thirty miles of the abortion clinic remains on the premises of the abortion clinic until all patients are stable and are ready to leave the recovery room and to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary. A physician shall sign the discharge order and be readily accessible and available until the last patient is discharged.

5. A physician discusses RhO(d) immune globulin with each patient for whom it is indicated and assures it is offered to the patient in the immediate postoperative period or that it will be available to her within seventy-two hours after completion of the abortion procedure. If the patient refuses, a refusal form approved by the department shall be signed by the patient and a witness and included in the medical record.

6. Written instructions with regard to postabortion coitus, signs of possible problems and general aftercare are given to each patient. Each patient shall have specific instructions regarding access to medical care for complications, including a telephone number to call for medical emergencies.

7. There is a specified minimum length of time that a patient remains in the recovery room by type of abortion procedure and duration of gestation.

8. The physician assures that a licensed health professional from the abortion clinic makes a good faith effort to contact the patient by telephone, with the patient's consent, within twenty-four hours after a surgical abortion to assess the patient's recovery.

9. Equipment and services are located in the recovery room to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable fetus to the hospital.

G. The director shall adopt rules that prescribe standards for follow-up visits. At a minimum these rules shall require that:

1. For a surgical abortion, a postabortion medical visit is offered and, if requested, scheduled for three weeks after the abortion, including a medical examination and a review of the results of all laboratory tests. For a medication abortion, the rules shall require that a postabortion medical visit is scheduled between one week and three weeks after the initial dose for a medication abortion to confirm the pregnancy is completely terminated and to assess the degree of bleeding.

2. A urine pregnancy test is obtained at the time of the follow-up visit to rule out continuing pregnancy. If a continuing pregnancy is suspected, the patient shall be evaluated and a physician who performs abortions shall be consulted.

H. The director shall adopt rules to prescribe minimum abortion clinic incident reporting. At a minimum these rules shall require that:

1. The abortion clinic records each incident resulting in a patient's or viable fetus' serious injury occurring at an abortion clinic and shall report them in writing to the department within ten days after the incident. For the purposes of this paragraph, "serious injury" means an injury that occurs at an abortion clinic and that creates a serious risk of substantial impairment of a major body organ and includes any injury or condition that requires ambulance transportation of the patient.

2. If a patient's death occurs, other than a fetal death properly reported pursuant to law, the abortion clinic reports it to the department not later than the next department work day.

3. Incident reports are filed with the department and appropriate professional regulatory boards.

I. The director shall adopt rules relating to enforcement of this article. At a minimum, these rules shall require that:

1. For an abortion clinic that is not in substantial compliance with this article and the rules adopted pursuant to this article and section 36-2301 or that is in substantial compliance but refuses to carry out a plan of correction acceptable to the department of any deficiencies that are listed on the department's statement of deficiency, the department may do any of the following:

(a) Assess a civil penalty pursuant to section 36-431.01.

(b) Impose an intermediate sanction pursuant to section 36-427.

(c) Suspend or revoke a license pursuant to section 36-427.

(d) Deny a license.

(e) Bring an action for an injunction pursuant to section 36-430.

2. In determining the appropriate enforcement action, the department consider the threat to the health, safety and welfare of the abortion clinic's patients or the general public, including:

(a) Whether the abortion clinic has repeated violations of statutes or rules.

(b) Whether the abortion clinic has engaged in a pattern of noncompliance.

(c) The type, severity and number of violations.

J. The department shall not release personally identifiable patient or physician information.

K. The rules adopted by the director pursuant to this section do not limit the ability of a physician or other health professional to advise a patient on any health issue.

### **36-2161. Abortions; reporting requirements**

A. A hospital or facility in this state where abortions are performed must submit to the department of health services on a form prescribed by the department a report of each abortion performed in the hospital or facility. The report shall not identify the individual patient by name or include any other information or identifier that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained or sought to obtain an abortion. The report must include the following information:

1. The name and address of the facility where the abortion was performed.

2. The type of facility where the abortion was performed.

3. The county where the abortion was performed.

4. The woman's age.
5. The woman's educational background by highest grade completed and, if applicable, level of college completed.
6. The county and state in which the woman resides.
7. The woman's race and ethnicity.
8. The woman's marital status.
9. The number of prior pregnancies and prior abortions of the woman.
10. The number of previous spontaneous terminations of pregnancy of the woman.
11. The gestational age of the unborn child at the time of the abortion.
12. The reason for the abortion, including at least one of the following:
  - (a) The abortion is elective.
  - (b) The abortion is due to maternal health considerations, including one of the following:
    - (i) A premature rupture of membranes.
    - (ii) An anatomical abnormality.
    - (iii) Chorioamnionitis.
    - (iv) Preeclampsia.
    - (v) Other.
  - (c) The abortion is due to fetal health considerations, including the fetus being diagnosed with at least one of the following:
    - (i) A lethal anomaly.
    - (ii) A central nervous system anomaly.
    - (iii) Trisomy 18.
    - (iv) Trisomy 21.
    - (v) Triploidy.
    - (vi) Other.
  - (d) The pregnancy is the result of a sexual assault.
  - (e) The pregnancy is the result of incest.
  - (f) The woman is being coerced into obtaining an abortion.
  - (g) The woman is a victim of sex trafficking.
  - (h) The woman is a victim of domestic violence.
  - (i) Other.
  - (j) The woman declined to answer.
13. The type of procedure performed or prescribed and the date of the abortion.
14. Any preexisting medical conditions of the woman that would complicate pregnancy.
15. Any known medical complication that resulted from the abortion, including at least one of the following:
  - (a) Shock.
  - (b) Uterine perforation.
  - (c) Cervical laceration requiring suture or repair.
  - (d) Heavy bleeding or hemorrhage with estimated blood loss of at least five hundred cubic centimeters.
  - (e) Aspiration or allergic response.
  - (f) Postprocedure infection.
  - (g) Sepsis.
  - (h) Incomplete abortion retaining part of the fetus requiring reevacuation.

- (i) Damage to the uterus.
  - (j) Failed termination of pregnancy.
  - (k) Death of the patient.
  - (l) Other.
  - (m) None.
16. The basis for any medical judgment that a medical emergency existed that excused the physician from compliance with the requirements of this chapter.
17. The physician's statement if required pursuant to section 36-2301.01.
18. If applicable, the weight of the aborted fetus for any abortion performed pursuant to section 36-2301.01.
19. Whether a fetus or embryo was delivered alive as defined in section 36-2301 during or immediately after an attempted abortion and the efforts made to promote, preserve and maintain the life of the fetus or embryo pursuant to section 36-2301.
20. Statements by the physician and all clinical staff who observed the fetus or embryo during or immediately after the abortion certifying under penalty of perjury that, to the best of their knowledge, the aborted fetus or embryo was not delivered alive as defined in section 36-2301.
21. The medical specialty of the physician performing the abortion, including one of the following:
- (a) Obstetrics-gynecology.
  - (b) General or family practice.
  - (c) Emergency medicine.
  - (d) Other.
22. The type of admission for the patient, including whether the abortion was performed:
- (a) As an outpatient procedure in an abortion clinic.
  - (b) As an outpatient procedure at a hospital.
  - (c) As an inpatient procedure at a hospital.
  - (d) As an outpatient procedure at a health care institution other than an abortion clinic or hospital.
23. Whether anesthesia was administered to the mother.
24. Whether anesthesia was administered to the unborn child.
- B. The hospital or facility shall request the information specified in subsection A, paragraph 12 of this section at the same time the information pursuant to section 36-2153 is provided to the woman individually and in a private room to protect the woman's privacy. The information requested pursuant to subsection A, paragraph 12 of this section may be obtained on a medical form provided to the woman to complete if the woman completes the form individually and in a private room.
- C. If the woman who is seeking the abortion discloses that the abortion is being sought because of a reason described in subsection A, paragraph 12, subdivision (d), (e), (f), (g) or (h) of this section, the hospital or facility shall provide the woman with information regarding the woman's right to report a crime to law enforcement and resources available for assistance and services, including a national human trafficking resource hotline.
- D. The report must be signed by the physician who performed the abortion or, if a health professional other than a physician is authorized by law to prescribe or administer abortion medication, the signature and title of the person who prescribed or administered the abortion medication. The form may be signed electronically and shall indicate that the person who signs the report is attesting that the information in the report is correct to the best of the person's knowledge. The hospital or facility must transmit the report to the department within fifteen days after the last day of each reporting month.
- E. Any report filed pursuant to this section shall be filed electronically at an internet website that is designated by the department unless the person required to file the report applies for a waiver from electronic reporting by submitting a written request to the department.

**DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 13, Article 1, Hearing Screening



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 31, 2019

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

**Amend:** R9-13-101; R9-13-102; R9-13-103; R9-13-104; R9-13-105

**Repeal:** R9-13-107; R9-13-108; R9-13-109

**New Section:** Table 13.1; R9-13-106; R9-13-107; R9-13-108; R9-13-109;  
R9-13-110; R9-13-111; R9-13-112; R9-13-113; R9-13-114;  
R9-13-115

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This rulemaking from the Arizona Department of Health Services ("Department") seeks to amend and add rules in Title 9, Chapter 13, Article 1 related to hearing screening programs and school children hearing screenings to detect hearing loss. The Department is conducting this rulemaking to implement its proposed course of action described in its last 5YRR for these rules, approved by the Council on November 7, 2017. Specifically, the Department indicates the proposed changes to the rules reduces the regulatory burden by simplifying requirements, removing obsolete requirements, updating standards for hearing screening and equipment to make consistent with national standards and best practices, and clarifying screener qualifications and frequency of hearing screening for students to ensure that Arizona students are not at risk.

The Department has also proposes adding six new Sections containing requirements for training individuals who wish to be a hearing screening trainers and trainers who wish to renew

trainer certificate of completion. The new rules include requirements for trainer eligibility; request for certificate; trainer instruction, examination, and observation; renewal of certificate and continuing education; and request to change a trainer's personal information.

The Department requested an exception to the rulemaking moratorium from the Governor's office to amend the hearing screening rules which was approved on July 18, 2017.

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

Yes. The Department cites to both general and specific statutory authority for the rules.

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

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

**3. Summary of the agency's economic impact analysis:**

In this rulemaking, the Department changed the rules in R9-13-101 through R9-13-108 to add new definitions; updated outdated screening requirements, screener qualifications, terms and definitions; made hearing screening criteria and requirements consistent with current national standards and best practices; and simplified hearing screening population, notifications, record and reporting, and equipment standards. There is minimal economic impact to most stakeholders.

The Department expects to incur a minimal to moderate economic impact to draft and promulgate the new rules. Department personnel and resources will be used to provide training to individuals who wish to become a hearing-screening trainer or who wish to renew an existing trainer certificate of completion.

Stakeholders include:

- The Department
- Schools (Accommodation, charter, public, or private school as defined in A.R.S. § 15-101.
- Early Childhood Education Programs
- Students and parents of students
- Individuals who wish to be a hearing screening screener and screeners
- Individuals who wish to be a hearing screening trainer or trainers
- Specialists (A licensed audiologist or a doctor of medicine licensed according to A.R.S. Title 32, Chapters 13 or 17, who specialize in the ear, nose, and throat.)
- The public

During the 2017-2018 school year, the Department's Sensory Program database identified 3,152 schools, including private schools. Of those schools identified, 1,856 complied

with the reporting requirements in R9-13-109: Records and Reporting Requirements. According to the data the Department received from reporting schools, Arizona had approximately 1.1 million students enrolled. Of these, 544,152 students were reported as having a hearing screening during the school year. From those students that received hearing screenings, 600 students were newly identified as having a hearing loss. As of April 15, 2019, there were 25 active trainers and approximately 4,500 active screeners listed in the Sensory Program database.

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

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking. The Department has determined that the benefits related to hearing screenings for students identified in the new rules outweigh any potential cost associated with this rulemaking.

**5. What are the economic impacts on stakeholders?**

The Department expects to incur a moderate cost to draft and promulgate the new rules, but it believes that the benefits of having new rules over time will exceed any cost incurred. The Department also expects to incur moderate costs to have the database updated to include additional information about the type of audiological equipment used to conduct a hearing screening. The Department anticipates that its greatest cost will come from Department personnel and resources used to provide training to individuals who wish to become a hearing-screening trainer or wish to renew an existing trainer certificate of completion.

The Department does not expect public or private employment in the state to be affected by this rulemaking. The Department believes that Arizonans in general will benefit from students that receive early intervention services to become successful and contributing member of the community as adults.

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

Yes. During the public comment period, the Department received questions and comments from District Audiologist, Tempe School District #3 on the following topics:

1. When the rules would become effective;
2. Clarification regarding requirement in R9-13-115(C) that require a screener who is trained in both pure tone audiometry and OAE to renew current certificate of completion within 30 days prior to the expiration date of the certificate; and
3. Whether the Hearing Screening Program will provide a revised curriculum for trainers to use.

The Department responded to question #1 that the expected effective date would be July 3, 2019, or one day after the Council's approval of the rulemaking if the requested immediate

effective date is approved. The Department responded to question #2 clarifying that the requirement in R9-13-115(C) only applies to screeners who have a certificate of completion that lists completion of “both” pure tone screening and OAE screening on that same certificate. Finally, the Department responded to question #3 by affirming that the Hearing Screening Program will provide a revised curriculum for trainers to use.

The Department has adequately responded to all public comments in this matter.

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

No. There were no substantial changes, considered as a whole, between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. The Department indicates only minor grammatical and technical corrections were made at the request of Council staff.

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

Not applicable.

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

R9-13-108 provides a certificate of completion which is issued to an individual who has completed the requirements to perform hearing screening for students (“screener certificate of completion”). R9-13-111 and R9-13-112 provide that an individual may apply for and renew a trainer certificate of completion that is issued to individuals who wish to be a hearing screening trainer (“trainer certificate of completion”). The Department indicates that the certificates of completion are general permits as defined by A.R.S. § 41-1001(11). As such, the agency complies with A.R.S. § 41-1037.

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

No. The Department indicates that it did not review or rely on any study for this rulemaking.

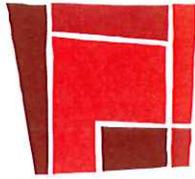
**11. Conclusion**

Council staff finds that the rules are written in a manner that is clear, concise, and understandable to the general public.

The Department has proposed an immediate effective date for these rules pursuant to A.R.S. § 41-1032(A)(4) and (5), asserting that an immediate effective date is necessary to ensure that Arizona students receive hearing screening; the rules are less burdensome than current rules,

provide greater benefits to students, parents, schools, hearing screening trainers, and screeners, and the Department; and have no public impact on public health and safety and do not affect public involvement or public participation process. While Council staff finds that the proposed rules do have an impact on the public health and welfare, Council staff finds that the rules are also an attempt “to preserve the public...health or safety” as per A.R.S. § 1032(A)(1). As such, Council staff finds that the Department has provided adequate justification in support of an immediate effective date.

Council staff recommends approval of this rulemaking.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

May 17, 2019

Connie Wilhelm, Vice-Chair  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 N. 15<sup>th</sup> Avenue, Suite 305  
Phoenix, AZ 85007

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

Dear Ms. Wilhelm:

Enclosed are the administrative rules identified above which I am submitting, as the Designee of the Director of the Department of Health Services (Department), for approval by the Governor's Regulatory Review Council (Council) under 41-1052.

The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

- The close of record:  
The close of record was April 30, 2019. Submission of the rules is within the 120 days allowed for final rulemaking.
- Procedures followed:  
As required by the Administrative Procedure Act, a Notice of Rulemaking Docket Opening was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on October 27, 2017 and October 26, 2018. A Notice of Proposed Rulemaking was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on March 22, 2019. The Department held one oral proceeding on April 30, 2019. The Department received no oral comment.
- Whether the rulemaking activity relates to a five-year-review report and, if applicable, the date the report was approved by the Council:  
The rulemaking is related to the five-year-review report for 9 A.A.C. 13, Article 1, which was approved by the Council on November 7, 2017.
- Whether the rule contains a new fee and, if it does, citation of the statute expressly authorizing the new fee:  
The rules do not contain a new fee.

5. Whether the rule contains a fee increase:  
The rules do not contain a fee increase.
6. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032:  
The Department requests an immediate effective date for the new rules under A.R.S. § 41-1032 (A)(4) and (5). Amending Article 1 ensures that the rules necessary to ensure that Arizona students receive hearing screenings are efficient and effective. The new rules: are less burdensome than current rules; provide a greater benefit to students, parents, schools, hearing screening trainers and screeners, and the Department; have no public impact on the public health and safety; and do not affect public involvement or the public participation process.
7. A list of all items enclosed:
  - a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;
  - b. 2019 Economic, Small Business, and Consumer Impact Statement,
  - c. A copy of the general and specific statutes authorizing the rule, and
  - d. A copy of comment received during official 30-day public comment period and identified in Notice of Final Rulemaking.

The Department's point of contact for questions about the rulemaking documents is Teresa Koehler at [Teresa.Koehler@azdhs.gov](mailto:Teresa.Koehler@azdhs.gov).

The Department is requesting that the rules be heard at the Council meeting on July 2, 2019.

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

I certify that the Department, as the preparer of the economic, small business, and consumer impact statement, has notified the Joint Legislative Budget Committee that no new full-time employees are necessary to implement and enforce the rules.

Sincerely,



Robert Lane  
Director's Designee

RL:tk

Enclosures

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

**NOTICE OF FINAL RULEMAKING**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 13. DEPARTMENT OF HEALTH SERVICES – HEALTH PROGRAMS SERVICES**  
**ARTICLE 1. HEARING SCREENING**

**PREAMBLE**

- | <b><u>1.</u></b> | <b><u>Article, Part, or Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
|------------------|------------------------------------------------------------------|---------------------------------|
|                  | R9-13-101                                                        | Amend                           |
|                  | R9-13-102                                                        | Amend                           |
|                  | Table 13.1                                                       | New Section                     |
|                  | R9-13-103                                                        | Amend                           |
|                  | R9-13-104                                                        | Amend                           |
|                  | R9-13-105                                                        | Amend                           |
|                  | R9-13-106                                                        | New Section                     |
|                  | R9-13-107                                                        | Repeal                          |
|                  | R9-13-107                                                        | New Section                     |
|                  | R9-13-108                                                        | Repeal                          |
|                  | R9-13-108                                                        | New Section                     |
|                  | R9-13-109                                                        | Repeal                          |
|                  | R9-13-109                                                        | New Section                     |
|                  | R9-13-110                                                        | New Section                     |
|                  | R9-13-111                                                        | New Section                     |
|                  | R9-13-112                                                        | New Section                     |
|                  | R9-13-113                                                        | New Section                     |
|                  | R9-13-114                                                        | New Section                     |
|                  | R9-13-115                                                        | New Section                     |
- 2.** **Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(F)  
Implementing statutes: A.R.S. §§ 36-899.01 through 36-899.04
- 3.** **The effective date of the rules:**  
The Arizona Department of Health Services (Department) requests an immediate effective date for the new rules under A.R.S. § 41-1032 (A)(4) and (5). By prescribing measures necessary to

ensure that Arizona students receive hearing screening in 9 A.A.C. 13, Article 1, the rules are less burdensome than current rules; provide greater benefits to students, parents, schools, hearing screening trainers and screeners, and the Department; and have no public impact on public health and safety and do not affect public involvement or public participation process.

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

Notice of Rulemaking Docket Opening: 23 A.A.R. 3061, October 27, 2017

Notice of Rulemaking Docket Opening: 24 A.A.R. 3057, October 26, 2018

Notice of Proposed Rulemaking: 25 A.A.R. 697, March 22, 2019

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

Name: Patricia Tarango, Bureau Chief

Address: Arizona Department of Health Services  
Division of Public Health Services, Public Health Prevention  
Bureau of Women's and Children's Health  
150 N. 18th Ave., Suite 320  
Phoenix, AZ 85007-3248

Telephone: (602) 542-1436

Fax: (602) 364-1496

E-mail: Patricia.Tarango@azdhs.gov  
or

Name: Robert Lane, Chief

Address: Arizona Department of Health Services  
Office of Administrative Counsel and Rules  
150 N. 18th Ave., Suite 200  
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-899.01 requires a program of hearing evaluation services to be established by the Arizona Department of Health Services (Department) and hearing evaluation services administered to children attending school. The Department in Arizona Administrative Code (A.A.C.) Title 9, Chapter 13, Article 1 established rules for the hearing

screening program and school children hearing screenings to detection hearing loss. In the 2017 Hearing Screening Five-year-review Report (Report), the Department reported receiving written criticisms, identified changes that would improve the rules; and in the purposed course of action, planned to amend the rules in Article 1. To implement the planned purposed course of actions, the Department requested an exception to the rulemaking moratorium established by Executive Order 2017-02. On July 18, 2017, the Governor approved the Department's request for exception to the rulemaking moratorium to amend the hearing screening rules. The Department has amended 9 A.A.C. 13, Article 1 rules through regular rulemaking and anticipates submitting a Notice of Final Rulemaking to the Governor's Regulatory Review Council by July 2019. The changes to the rules include reducing the regulatory burden by simplifying requirements, removing obsolete requirements; updating standards for hearing screening and equipment to make consistent with national standards and best practices; and clarifying screener qualifications and frequency of hearing screening for students to ensure that Arizona students are not at risk. The new rules will also conform to rulemaking format and style requirements of the Governor's Regulatory Review council and the Office of the Secretary of State.

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

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

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

Not applicable

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

The Department has identified persons directly affected by the rules to be the Department; schools; students and parents of students; early childhood education centers, individuals who wish to be a hearing screening screener and screeners; individuals who wish to be a hearing screening trainer and trainers; specialists; and the public. Annual cost and benefit changes are designated as minimal when \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or more in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification. No new FTEs will be required due to this rulemaking. In this rulemaking, the Department changed the rules in R9-13-101 through R9-13-108 to add new definitions; update outdated screening requirements, screener

qualifications, terms and definitions; make hearing screening criteria and requirements consistent with current national standards and best practices; and simplify hearing screening population, notifications, records and reporting, and equipment standards.

Additionally, and as indicated in the 2017 Report, the Department's cooperative agreement with the University of Arizona (UoA) terminated on December 31, 2015. Through the cooperative agreement, the UoA provided hearing screening training and certification to individuals interested in becoming a hearing screening trainer or master trainer. The UoA also provided renewal hearing screening courses to certified hearing screening trainers. With the UoA no longer providing hearing screening trainers, the Department established six new Sections that include standards and regulations for trainer eligibility; instruction, examination, observation and certificate of completion for individuals who wish to be a hearing screening trainer; and renewal requirements, including continuing education, for trainers who wish to renew their certificate of completion.

Updating the rules requires Department's resources to amend current rules in R9-13-101 through R9-13-108 and to draft new rules in Sections R9-13-110 through R9-13-115. The Department expects to incur a moderate cost to draft and promulgate the new rules, but believes the benefit of having new rules over time will exceed any cost incurred. The Department also expects to incur minimal-to-moderate costs to update the database to include collecting information about the type of audiological equipment used to conduct a hearing screening; and costs are also expected for administrative support used to update and maintain the hearing screening website, forms, and other related resources and documents. The Department estimates it may receive a significant benefit for schools, screeners, and trainers being able to access updated hearing screenings information through Department's electronic sources. The Department anticipates that it may incur a significant cost for Department personnel and resources used to provide training to individuals who wish to become a hearing-screening trainer or who wish to renew an existing trainer certificate of completion. Lastly, the Department believes it will receive a significant benefit for having rules that are more effective and no longer having obsolete requirements and antiquated language and definitions.

Current rules require a school administrator to ensure that a school provides hearing screening for students enrolled in the school, as well as specify how, when, and by whom hearing screening is required to be performed. In the new rules, the Department updated and clarified many requirements in R9-13-101 through R9-13-108. The Department clarified the hearing screening

population and added a requirement for students who repeat a grade to receive a hearing screening to ensure that students who repeat a grade do not have a hearing loss. The Department estimates adding a requirement to screen students who repeat a grade may cause a school to incur a minimal cost for providing additional screenings. However, schools should receive a significant benefit for identifying students who were not previously identified and who are provided early intervention services; reasoning that students whose hearing need are met will be better students and less likely to fall behind.

In R9-13-104, the new rules include changing the word “days” to “school days;” adding a requirement for administrators to ensure students who do not receive an initial hearing screening, when expected, are re-scheduled for an initial hearing screening; and requirements for students that did not pass the initial hearing screening were changed to clarify when the second hearing screening should occur and what audiological equipment should be used. The Department anticipates that having to re-schedule students who did not receive an initial hearing screening could cause school to incur a cost; the cost is expected to be at most minimal, since the number of students re-scheduled is small. The Department believes the change to use “school days” rather than “days” will provide schools with a significant benefit for having more time to provide hearing screenings. The Department estimates that “30 school days” is equivalent to “62 days.”

Also, changes to rules in R9-13-105 clarify school notifications provided to parent and removes requirements for schools to provide parents a referral for a student who does not pass a hearing screening. The Department anticipates that these changes may provide a minimal benefit to a school. The new rules also provide flexibility to a school as to how a notification occurs by defining “notification” to mean a method used to inform or announce information on paper, electronic, photographic, or other permanent form. The Department believes many schools provide notification of hearing screenings to parent using all available resources. The Department anticipates that adding this requirement may cause schools to receive a significant benefit for not having to provide notifications to parent using a source that would otherwise cause schools to incur additional costs to provide. Overall, the Department believes removing obsolete requirements, adding new requirements, and updating antiquated language improves the effective of the hearing screening rules and provides significant benefits to all schools that are providing hearing screenings to students.

To amended screener qualification rules, the Department added requirements specifying individuals who may become a screener (individuals); simplified classroom instruction and reduce overall time period to complete screener training; and added a requirement for individuals

to demonstrate competency using audiological equipment. The new rules also changed the renewal time period from five years to four years, simplified renewal requirements for screeners who wish to renew screener certificate of completion (screeners) and added continuing education (CEs) units to allow screeners to complete two hours of training on-line rather than in a classroom. In new R9-13-103, requirements for a screener to determine whether a student is physically or behaviorally limited in the ability to respond to perceived sounds, and if verified, immediately report to an administrator what the screener observed that prevented the screener from performing a hearing screening on a student were added. The Department believes individuals and screeners will not incur additional costs due to the rules. The Department expects that if additional costs do occur for individuals and screeners, the additional cost will be related to trainers increasing fees for providing hearing screening trainings. The Department expects individuals and screeners will receive a significant benefit for having rules that simplify the initial and renewal process and no longer contain obsolete requirements and antiquated language. The new rules are more effective, clearer, and understandable.

The Department added six new Sections containing requirements for training individuals who wish to be a trainer (individuals) and trainers who wish to renew trainer certificate of completion (trainers). The new rules include requirements for trainer eligibility; request for certificate; trainer instruction, examination, and observation; renewal of certificate and continuing education; and request to change a trainer's personal information. The Department expects that the new rules regarding initial and renewal requirements for obtaining a trainer certificate of completion may cause individuals and trainers to incur a minimal cost for time spent completing the trainings. However, since the new rules do not require individuals to pay for training, the Department believes individuals completing training and obtaining a trainer certificate of completion will receive a significant benefit. Additionally, once a trainer, a trainer will receive a significant benefit for monies collected for provide training to individuals who wish to be a screener. The Department believes the same is true for trainers, who assist and provide training to screeners renewing a screener certificate of completion. The Department anticipates that individuals and trainers will receive a significant benefit for having rules that are consistent with current national standards and best practices and are effective, clear, and understandable.

The Department does not anticipate the rules will be burdensome for specialist. The Department estimates that overall specialist will receive a minimal-to-moderate benefit from school administrators providing notifications to parents that their student to receives an audiological evaluation performed by a specialist. For Arizona's students and parents, the new rules clarify

and update criteria for hearing screenings, qualifications of screeners, equipment standards, and notification of parents that may provide a significant benefit by improving the detection of hearing loss and providing early intervention services sooner. The new requirements in R9-13-105 clarify that parents' are notified of hearing screening results, rather than receiving a referral; and if a student does not receive a hearing screening due to existing physical or behavioral limit in the student's ability to adequately respond to hearing screening, the student's parents are to be informed immediately to ensure the student does not suffer from prolonged deterioration related to the physical or behavioral limit identified by the screener. The Department anticipates that the changes will provide a significant benefit to students and parents of students. The Department has determined that the benefits related to hearing screenings for students identified in the new rules outweighs any potential costs associated with this rulemaking.

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

The Department did not make any changes between the proposed rulemaking and the final rulemaking.

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

During the formal 30-day public comment period, the Department received questions and comments from District Audiologist, Tempe Elementary School District #3. In summary, the commenter (1) asked when the rules would become effective; (2) asked for clarification regarding requirement in R9-13-115(C) that requires a screener who is trained in both pure tone audiometry and OAE to renew current certificate of completion within 30 days prior to the expiration date of the certificate; and (3) asked whether the Hearing Screening Program will provide a revised curriculum for trainers to use. The Department's response to (1) explained the final rulemaking approval process and provided the commenter with an expected effective date of July 3, 2019. The Department's response to (2) clarified that the requirement in R9-13-115(C) only applies to screeners who have a certificate of completion that lists completion of "both" pure tone screening and OAE screening on that same certificate. The Department's response to (3) affirmed that the Hearing Screening Program will provide a revised curriculum for trainers to use.

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

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

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

The certificate of completion issued to individuals is a general permit consistent with A.R.S. § 41-1037. A certificate of completion is issued to individuals to conduct training/services that are substantially similar in nature and is not limited to providing the training/services in any one location.

**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:**

Not applicable

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

No business competitiveness analysis was received by the Department.

**13. Incorporated by reference and their location in the rules:**

Not applicable

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

The rule was not previously made as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 13. DEPARTMENT OF HEALTH SERVICES – HEALTH PROGRAMS SERVICES**

**ARTICLE 1. HEARING SCREENING**

Section

- R9-13-101. Definitions
- R9-13-102. Hearing Screening Population
  - Table 13.1 Hearing Screening Population (students)
- R9-13-103. Hearing Screening Requirements
- R9-13-104. ~~Criteria for Passing Hearing Screening;~~ Requirements for Performing a Second Hearing Screening
- R9-13-105. ~~Referral;~~ Notification; Follow-up
- R9-13-106. Equipment Standards
- R9-13-107.  ~~Screener Qualifications~~ Records and Reporting Requirements
- R9-13-108. ~~Equipment Standards~~ Screener Qualifications
- R9-13-109. ~~Records and Reporting Requirements~~ Trainer Eligibility
- R9-13-110. Trainer Certificate of Completion Request
- R9-13-111. Trainer Instruction, Examination, and Observation
- R9-13-112. Trainer Certificate of Completion Renewal
- R9-13-113. Trainer Continuing Education
- R9-13-114. Requesting a Change
- R9-13-115. Requirement for Screener or Trainer Certificate of Completion Issued Before Article Effective Date

## ARTICLE 1. HEARING SCREENING

### R9-13-101. Definitions

In this Article, unless the context otherwise requires:

1. “Assistive listening device” has the meaning in A.R.S. § 36-1901.
2. “Audiologist” means an individual licensed under A.R.S. Title 36, Chapter 17.
3. “Audiometer” means an electronic device that generates signals used to measure hearing.
4. “Calibration” means a determination of the accuracy of an instrument by measurement of a variation from a standard.
5. “Cochlear implant” means a surgically inserted device that electrically stimulates the hearing nerve in the inner ear.
6. “dB” means decibel.
7. “dB HL” means decibel hearing level.
8. “Deaf” has the meaning in A.R.S. § 36-1941.
9. “Department” means the Arizona Department of Health Services.
10. “Documentation” means signed and dated information in written, photographic, electronic, or other permanent form.
11. “Effusion” means the escape of fluid from a blood or lymphatic vessel into tissue or a cavity.
12. “Frequency” means the number of cycles per second of a sound wave.
13. “Hard of hearing” has the meaning in A.R.S. § 36-1941.
14. “Hearing aid” has the meaning in A.R.S. § 36-1901.
15. “Hearing screening” means a test of a student’s ability to hear certain frequencies at a consistent loudness performed in a school by an individual who meets the requirements in R9-13-107.
16. “Hz” means Hertz, a unit of frequency equal to one cycle per second.
17. “Immittance” means the ease of transmission of sound through the middle ear.
18. “Inner ear” means the semicircular canals, auditory nerve, and cochlea.
19. “Intensity” means the strength of a sound wave striking the eardrum resulting in the perception of loudness as expressed in decibels or decibels hearing level.
20. “Kindergarten” means the grade level immediately preceding first grade.
21. “Middle ear” means the eardrum, malleus, incus, stapes, and eustachian tube.
22. “mm H<sub>2</sub>O” means millimeters of water.

23. ~~“Noise floor” means sounds present in the auditory canal from either the environment or bodily functions such as breathing and blood flow.~~
24. ~~“Otitis media” means inflammation of the middle ear.~~
25. ~~“Otoacoustic emissions” means the sounds generated from the inner ear.~~
26. ~~“Outer ear” means the pinna, lobe, and auditory canal.~~
27. ~~“Parent” has the meaning in A.R.S. § 15-101.~~
28. ~~“Physician” means an individual licensed under A.R.S. Title 32, Chapter 13 or 17.~~
29. ~~“Preschool” means the instruction preceding kindergarten provided to individuals three to five years old through a:~~
- a. ~~School as defined in A.R.S. § 15-101,~~
  - b. ~~Accommodation school as defined in A.R.S. § 15-101,~~
  - c. ~~Charter school as defined in A.R.S. § 15-101, or~~
  - d. ~~Private school as defined in A.R.S. § 15-101.~~
30. ~~“Primary care practitioner” means an individual licensed as a registered nurse practitioner under A.R.S. Title 32, Chapter 15 or a physician assistant under A.R.S. 32, Chapter 25.~~
31. ~~“Pure tone” means a single frequency sound.~~
32. ~~“Reproducibility” means the correlation of two responses measured simultaneously and reported by percentage.~~
33. ~~“School” means:~~
- a. ~~School as defined in A.R.S. § 15-101;~~
  - b. ~~Preschool;~~
  - c. ~~Kindergarten;~~
  - d. ~~Accommodation school as defined in A.R.S. § 15-101,~~
  - e. ~~Charter school as defined in A.R.S. § 15-101, or~~
  - f. ~~Private school as defined in A.R.S. § 15-101~~
34. ~~“School administrator” means an individual or the individual’s designee assigned to act on behalf of a school by the body organized for the government and the management of the school.~~
35. ~~“School year” means the period between July 1 and the following June 30.~~
36. ~~“Screener” means an individual qualified to perform a hearing screening in a school according to R9-13-107.~~
37. ~~“Special education” has the meaning in A.R.S. § 15-761.~~
38. ~~“Speech language pathologist” means an individual licensed under A.R.S. Title 36, Chapter 17.~~

39. ~~“Student” means an individual enrolled in a school.~~
40. ~~“Supervision” has the meaning in A.R.S. § 36-401.~~
41. ~~“Tympanogram” means a chart of the indirect measurements of the ease of movement of the parts of the middle ear as air pressure in the auditory canal changes.~~
42. ~~“Tympanometer” means a device that indirectly measures the ease of movement of the parts of the middle ear as air pressure in the auditory canal changes.~~
43. ~~“Tympanometry” means the indirect measurement of the ease of movement of the parts of the middle ear as air pressure in the auditory canal changes.~~

In this Article, unless the context otherwise requires:

1. “Accredited” means that an educational institution is recognized by the U.S. Department of Education as providing standards necessary to meet acceptable levels of quality for its graduates to gain admission to other reputable institutions of higher learning or to achieve credentials for professional practice.
2. “Administrator” means the principal or person having general daily control and oversight of a school or that person’s designee.
3. “Assistive listening device” has the same meaning as “assistive listening device or system” in A.R.S. § 36-1901.
4. “Audiological equipment” means an instrument used to help determine the presence, type, or degree of hearing loss, such as:
  - a. A pure tone audiometer,
  - b. A tympanometer, or
  - c. An otoacoustic emissions device.
5. “Audiological evaluation” means:
  - a. Examination of an individual’s ears;
  - b. Assessment of the functioning of the individual’s middle ear;
  - c. Testing of the individual’s ability to perceive sounds using audiological equipment; and
  - d. Analysis by a specialist of the results obtained from the activities described in subsections (a) through (c) to determine if the individual has a hearing loss and, if so, the type and degree of the individual hearing loss.
6. “Audiologist” means an individual licensed under A.R.S. Title 36, Chapter 17.
7. “Audiometer” means an electronic device that administers sounds of varying pitches and intensities to assess an individual's ability to hear the sounds.

8. “Auditory canal” means the tubular passage between the cartilaginous portion of the ear that projects from an individual’s head and the outer surface of the ear drum.
9. “Auditory nerve” means the filament of neurological tissue that:
  - a. Connects the cochlea and the brain, and
  - b. Transmits impulses related to hearing.
10. “Calendar day” means each day, that:
  - a. Is not the day of the act, event, or default from which a designated period of time begins to run; and
  - b. Includes the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
11. “Calibrate” means to measure the response of an instrument against a standard and adjust the instrument until the response falls within specified values according to the equipment’s manufacturer specifications and by an authorized manufacturer’s dealer, if recommended by the manufacturer.
12. “Certificate of completion” means a document issued to an individual who has completed the requirements in:
  - a. R9-13-108 to perform hearing screening for students according to this Article; or
  - b. R9-13-111 or R9-13-112 to provide training to individuals who perform hearing screenings.
13. “Cochlea” means a coiled tube in the inner ear that converts sounds into neural messages.
14. “Cochlear implant” means a device that is surgically inserted into the cochlea to electrically stimulate the auditory nerve.
15. “Continuing education” means a course that provides instruction and training that is designed to develop or improve a trainer or screener's professional competence.
16. “Continuing education unit” means 50 to 60 minutes of continuous course work.
17. “Course” means a workshop, seminar, lecture, conference, or other learning program activities approved by the Department.
18. “daPa” means dekaPascal, a standard measure of air pressure.
19. “dB HL” means decibel hearing level, a measurement used to compare the intensity at which an individual hears sound at a particular frequency to a standard.
20. “dB SPL” means sound pressure level measured in units of decibels.
21. “Deaf” has the same meaning as in A.R.S. § 36-1941.
22. “Diagnosis” means a determination of whether a student is deaf or hard of hearing that is:

- a. Made by specialist; and
  - b. Based on an audiological evaluation of the student.
23. “Documentation” means a method used to report information on paper, electronic, photographic, or other permanent form.
24. “Eardrum” means the tympanic membrane in the ear that vibrates in response to sound.
25. “Earphone” means the part of an audiometer that is worn over an individual’s ear.
26. “Electroacoustic analysis” means the evaluation by an audiologist of the functioning of a hearing aid or an assistive listening device using specialized electronic equipment.
27. “Eustachian tube” means a passage in an individual’s head that:
- a. Connects the middle ear and the throat, and
  - b. Equalizes pressure on both sides of the eardrum.
28. “Follow-up” means an action that serves to verify the effectiveness of a previous hearing screening that resulted in treatment.
29. “Frequency” means the number of cycles per second of a sound wave, expressed in Hz and corresponding to the pitch of sound.
30. “Hard of hearing” has the same meaning as in A.R.S. § 36-1941.
31. “Hearing aid” has the same meaning as in A.R.S. § 36-1901.
32. “Hearing loss” means the difference, expressed in decibels, between the hearing threshold of an individual and a standard reference hearing threshold.
33. “Hearing screening” means:
- a. The same as “hearing screening evaluation” in A.R.S. § 36-899, and
  - b. Is performed by an individual who meets the requirements specified in R9-13-108 for the purpose of identifying students who may need further evaluation; or
  - c. An audiological evaluation provided by a specialist.
34. “Hearing screening population” means the students who are expected to have a hearing screening during a school year.
35. “Hearing threshold” means the faintest sound an individual hears at each frequency at which the individual is tested.
36. “Hz” means Hertz, a unit of frequency equal to one cycle per second.
37. “Immittance” means the mobility of the parts of the middle ear during the transmission of sound vibrations through the middle ear.
38. “Immediate family member” means an individual related by birth, marriage, or adoption.

39. “Inner ear” means the part of the ear, including the semicircular canals, cochlea, and auditory nerve, that converts sound into neural messages that are sent through the auditory nerve to the brain.
40. “Intensity” means the strength of a sound wave, resulting in the perception of sound volume as expressed in decibels or decibels hearing level dB HL.
41. “KHz” means a unit of frequency equal to one thousand cycles per second or one thousand hertz.
42. “Middle ear” means the part of the ear that conducts sound to the inner ear, consisting of:
- a. The eardrum;
  - b. The three small bones called the malleus, incus, and stapes; and
  - c. The space containing the eardrum and the three small bones.
43. “ml” means a volume measurement unit.
44. “mmho” or “millimho” means a unit of electric conductance.
45. “Notification” means a method used to inform or announce information on paper, electronic, photographic, or other permanent form.
46. “Other amplification device” means a hearing product used to amplify sounds, but may not address other components of hearing loss, such as distortion.
47. “Otitis media” means inflammation of the middle ear.
48. “Otoacoustic emissions device” or “OAE device” means an instrument used to determine the status of an individual’s cochlear function by:
- a. Presenting sounds into the auditory canal with a sound generator, and
  - b. Detecting, with one or more microphones, low-intensity echoes in the auditory canal that are produced by normally functioning cochlea in response to sounds.
49. “Outer ear” means the part of the ear that projects from an individual's head and the auditory canal.
50. “Parent” means a:
- a. Natural or adoptive mother or father,
  - b. Legal guardian appointed by a court of competent jurisdiction, or
  - c. Custodian as defined in A.R.S. § 8-201.
51. “Pass” means a recordable response detected by a hearing screener or audiological equipment consistent with established criteria for hearing screening requirements.
52. “Person” has the meaning in A.R.S. § 41-1001.
53. “Preschool” means the instruction preceding kindergarten provided to individuals three to five year old through a school.

54. “Probe” means the part of a tympanometer or an OAE that is inserted into an individual’s auditory canal during a hearing screening.
55. “Pure tone hearing screening” means a type of hearing screening using single frequency sounds that is performed using a pure tone audiometer or a device that includes the functions of both an audiometer and a tympanometer.
56. “School” means:
- a. A school as defined in A.R.S. § 15-101,
  - b. An accommodation school as defined in A.R.S. § 15-101,
  - c. A charter school as defined in A.R.S. § 15-101, or
  - d. A private school as defined in A.R.S. § 15-101.
57. “School day” means any day in which students attend an educational institution for instructional purposes.
58. “School year” means the period from July 1 through June 30.
59. “Screener” means an individual qualified to perform a hearing screening specified in R9-13-108.
60. “Semicircular canal” means the loop-shaped tubular parts of the inner ear that contain portions of the sensory organs of balance.
61. “Sound wave” means the repeating cycles of high pressure and low pressure that are made by a vibrating object.
62. “Special education” has the same meaning as in A.R.S. § 15-761.
63. “Specialist” means an audiologist or a doctor of medicine licensed according to A.R.S. Title 32, Chapters 13 or 17 who specializes in the ear, nose, and throat.
64. “Student” means an individual enrolled in a school.
65. “Supervision” means a screener is in the room observing and providing direction while an individual provides hearing screening to students specified in R9-13-108(M).
66. “Trainer” means an individual, who:
- a. Has a current certificate of completion, and
  - b. Provides classroom instruction and assessment of competency in using audiological equipment specified in R9-13-108.
67. “Tympanogram” means a graphic display of the mobility of the middle ear in response to an acoustic stimulus as a function of air pressure in the auditory canal.
68. “Tympanometer” means a device used to determine the status of an individual’s middle ear by:
- a. Presenting sound into the auditory canal with a sound generator;

- b. Varying the air pressures in the auditory canal via an air pump to control the movement of the tympanic membrane; and
- c. Detecting, with a microphone, variations in sound pressure level as acoustic energy passes into the individual's middle ear.

**R9-13-102. Hearing Screening Population**

**A.** ~~A school administrator shall ensure that the following students have a hearing screening each school year:~~

- 1. ~~A student enrolled in preschool, kindergarten, or grade 1, 2, 6, or 9;~~
- 2. ~~A student enrolled in grade 3, 4, or 5, unless there is written documentation that the student had a hearing screening in or after grade 2;~~
- 3. ~~A student enrolled in grade 7 or 8, unless there is written documentation that the student had a hearing screening in or after grade 6;~~
- 4. ~~A student enrolled in grade 10, 11, or 12 unless there is written documentation that the student had a hearing screening in or after grade 9;~~
- 5. ~~A student receiving special education; and~~
- 6. ~~A student who failed a second hearing screening in the prior school year.~~

**B.** ~~A school administrator shall ensure that a student has a hearing screening at the request of the student, the student's parent, a schoolteacher, a school nurse, a school psychologist, an audiologist, a physician, a primary care practitioner, a speech language pathologist, or Department staff.~~

**C.** ~~A hearing screening is not required if a:~~

- 1. ~~Student is age 16 years or over;~~
- 2. ~~Student's parent objects in writing to the screening as allowed under A.R.S. § 36-899.04;~~
- 3. ~~Written diagnosis or evaluation from an audiologist states that a student is deaf or hard of hearing; or~~
- 4. ~~Student has a hearing aid, an assistive listening device, or a cochlear implant.~~

**D.** ~~In addition to meeting the requirements in subsections (A) and (B), a school administrator shall ensure that a student who meets the criteria specified in State Board of Education rule R7-2-401 has a hearing screening required under R7-2-401.~~

**A.** An administrator shall ensure each student included in a school's hearing screening population receives a hearing screening.

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

- 1. A student who is 16 years of age or older;
- 2. A student for whom the school has documentation from a specialist that:

- a. States that the student received an audiological evaluation from a specialist;
  - b. Is dated within 12 months before the date the student would receive a hearing screening; or
  - c. Includes a time period during or after the current school year when the student is scheduled to receive another audiological evaluation from the audiologist or specialist; and
  - d. Contains the following information:
    - i. The student's name;
    - ii. The date the student's audiological evaluation was performed;
    - iii. The type of audiological equipment used;
    - iv. Whether the student has been diagnosed as being deaf or hard of hearing and, if so, the type and degree of hearing loss; and
    - v. The name of the specialist who performed the audiological evaluation; and
3. A student who is deaf or hard of hearing.
- C.** An administrator shall exclude from a school's hearing screening population a student for whom the administrator has documentation, from a student's parent objecting to the student receiving a hearing screening, specified in A.R.S. § 36-899.04, that contains:
- 1. The student's name;
  - 2. A statement objecting to the student receiving a hearing screening, including:
    - a. The school year the student should not receive the hearing screening, or
    - b. Instruction the student is not to receive a hearing screening until the parent notifies the administrator that the student may receive a hearing screening; and
  - 3. The parent's name, signature, and date signed.

**Table 13.1     Hearing Screening Population (students)**

<b><u>A.     <u>Students Included in Hearing Screening Population</u></u></b>	
1. <u>All grades, including preschool and kindergarten</u>	<p><u>Every student:</u></p> <ul style="list-style-type: none"> <li>a. <u>Who is enrolled in special education, as required by A.R.S. Title 15, Chapter 7, Article 4 and A.A.C. R7-2-401;</u></li> <li>b. <u>Who did not pass a hearing re-screening given to the student during the previous school year;</u></li> <li>c. <u>For whom the school does not have any documentation that the student has previously had a hearing screening;</u></li> </ul>

	<p>d. <u>Who is repeating a grade; and</u></p> <p>e. <u>For whom one of the following requests a hearing screening:</u></p> <p>i. <u>The student;</u></p> <p>ii. <u>The student’s parent;</u></p> <p>iii. <u>A teacher;</u></p> <p>iv. <u>A school nurse;</u></p> <p>v. <u>A school psychologist, licensed according to A.R.S. Title 32, Chapter 19.1;</u></p> <p>vi. <u>An audiologist, licensed according to A.R.S. § 36-1901;</u></p> <p>vii. <u>A specialist;</u></p> <p>viii. <u>A speech-language pathologist, licensed according to A.R.S. § 36-1901;</u></p> <p>ix. <u>A medical physician, licensed according to A.R.S. Title 32, Chapter 13;</u></p> <p>x. <u>A osteopathic physician licensed according to A.R.S. Title 32, Chapter 17; and</u></p> <p>xi. <u>The Department.</u></p>
2. <u>Preschool</u>	<u>Every enrolled student</u>
3. <u>Kindergarten</u>	<u>Every enrolled student</u>
4. <u>Grade 1</u>	<u>Every enrolled student</u>
5. <u>Grade 2</u>	<p><u>Every enrolled student for whom the school does not have:</u></p> <p>a. <u>Documentation that the student received and passed a hearing screening in or after grade 1, or</u></p> <p>b. <u>Documentation that meets the requirements in subsection (B).</u></p>
6. <u>Grade 3</u>	<u>Every enrolled student</u>
7. <u>Grades 4</u>	<p><u>Every enrolled student for whom the school does not have:</u></p> <p>a. <u>Documentation that the student received and passed a hearing screening in or after grade 3, or</u></p> <p>b. <u>Documentation that meets the requirements in subsection (B).</u></p>
8. <u>Grade 5</u>	<u>Every enrolled student</u>
9. <u>Grade 6</u>	<p><u>Every enrolled student for whom the school does not have:</u></p> <p>a. <u>Documentation that the student received and passed a hearing screening in or after grade 5, or</u></p>

	b. <u>Documentation that meets the requirements in subsection (B).</u>
<u>10. Grade 7</u>	<u>Every enrolled student</u>
<u>11. Grade 8</u>	<u>Every enrolled student for whom the school does not have:</u> a. <u>Documentation that the student received and passed a hearing screening in or after grade 7, or</u> b. <u>Documentation that meets the requirements in subsection (B).</u>
<u>12. Grade 9</u>	<u>Every enrolled student</u>
<u>13. Grades 10, 11, and 12</u>	<u>Every enrolled student for whom the school does not have:</u> a. <u>Documentation that the student received and passed a hearing screening in or after grade 9, or</u> b. <u>Documentation that meets the requirements in subsection (B).</u>
<b><u>B. Students Not Included in Hearing Screening Population</u></b>	
<u>1.</u>	<u>A student who is at least 16 years of age and has requested not to receive a hearing screening according to A.R.S. § 36-899.01.</u>
<u>2.</u>	<u>A student enrolled in a child care facility regulated pursuant to A.R.S. Title 36, Chapter 7.1, Child Care Programs.</u>

**R9-13-103. Hearing Screening Requirements**

- A.** ~~Before performing a hearing screening, a screener shall visually inspect a student's outer ears for:~~
- ~~1. Fluid or drainage,~~
  - ~~2. Blood,~~
  - ~~3. An open sore, or~~
  - ~~4. A foreign object.~~
- B.** ~~If a screener inspects a student's outer ears and finds any of the conditions in subsection (A), the screener shall not perform a hearing screening.~~
- C.** ~~A screener shall perform a hearing screening in each ear using one of the following hearing screening methods:~~
- ~~1. Four frequency, pure tone hearing screening that screens at each of the following frequencies and intensities:~~
    - ~~a. 500 Hz at 25 dB HL,~~
    - ~~b. 1000 Hz at 20 dB HL,~~
    - ~~c. 2000 Hz at 20 dB HL, and~~
    - ~~d. 4000 Hz at 20 dB HL;~~
  - ~~2. Three frequency, pure tone hearing screening with tympanometry that:~~

- a. ~~Includes a tympanogram that is generated automatically or is plotted at a minimum of the following three points:~~
    - i. ~~+100 mm H<sub>2</sub>O,~~
    - ii. ~~Point of maximum immittance, and~~
    - iii. ~~-200 mm H<sub>2</sub>O; and~~
  - b. ~~Screens at each of the following frequencies at 20 dB HL:~~
    - i. ~~1000 Hz,~~
    - ii. ~~2000 Hz, and~~
    - iii. ~~4000 Hz; or~~
3. ~~Otoacoustic emissions hearing screening using otoacoustic emissions equipment that generates a pass or no pass result:~~
- a. ~~Using a minimum of three frequencies,~~
  - b. ~~At no less than 3 dB above the noise floor, and~~
  - e. ~~With reproducibility greater than 50%.~~

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

- 1. Is an audiologist; or
- 2. Has a certificate of completion, specified in R9-13-108(F) or (I).

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

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

- 1. Verify that the student is on a list of students in the school's hearing screening population provided by the administrator; and
- 2. Conduct a non-otoscopic inspection of the student's outer ears for anything that would contra-indicate continuation of the hearing screening, such as:
  - a. Blood or other bodily fluid in or draining from the auditory canal,
  - b. Earwax that may be occluding,
  - c. An open sore, or
  - d. A foreign object.

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

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

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

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

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

1. Not perform a hearing screening on the student, and
2. Report the student's condition to the administrator within 10 school days.

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

1. A pure tone audiometer to perform a three-frequency, pure tone hearing screening on each of the student's ears with response recorded at each of the following frequencies and intensities:
  - a. 1000 Hz at 20 dB HL,
  - b. 2000 Hz at 20 dB HL, and
  - c. 4000 Hz at 20 dB HL;
2. A combination of a tympanometer and a pure tone audiometer to:
  - a. Produce a tympanogram showing the following results:
    - i. Peak acoustic immittance in mmho, ml, or compliance for a 226 Hz probe tone; or
    - ii. Tympanometric width in daPa; and
  - b. Obtain the results of a three-frequency, pure tone hearing screening on each of the student's ears with response recorded at each of the following frequencies and intensities:
    - i. 1000 Hz at 20 dB HL,
    - ii. 2000 Hz at 20 dB HL, and

- iii. 4000 Hz at 20 dB HL; or
  - 3. An OAE device to:
    - a. Measure responses of the cochlea to no less than three test frequencies; and
    - b. Device display screen indicates pass.

**R9-13-104. Criteria for Passing a Hearing Screening; Requirements for Performing a Second Hearing Screening**

**A.** ~~A student passes a hearing screening if:~~

- 1. ~~During a four-frequency, pure tone hearing screening, the student responds in each ear to each frequency at each intensity listed in R9-13-103(C)(1)(a) through (C)(1)(d);~~
- 2. ~~During a three-frequency, pure tone hearing screening with tympanometry, the student:~~
  - a. ~~Responds in each ear to each frequency as described in R9-13-103(C)(2)(b); and~~
  - b. ~~Reaches a point of maximum immittance in each ear within the range of +100mm H<sub>2</sub>O to -200mm H<sub>2</sub>O; or~~
- 3. ~~During an otoacoustic emissions hearing screening, the student receives a pass result in each ear according to R9-13-103(C)(3).~~

**B.** ~~If a student does not pass a hearing screening according to subsection (A), a screener shall perform a second hearing screening on the student no earlier than 30 days and no later than 45 days from the date of the first hearing screening. The screener shall perform the second hearing screening using the same method as the first hearing screening.~~

**A.** A screener shall consider a student to have passed a developmentally and age appropriate hearing screening if one of the following applies:

- 1. During a three-frequency, pure tone hearing screening, performed according to R9-13-103(G)(1), the student responds to each frequency and intensity specified in R9-13-103(G)(1)(a) through (c) for each ear on which a hearing screening is performed;
- 2. During a hearing screening using both a tympanometer and pure tone audiometer, performed according to R9-13-103(G)(2):
  - a. The tympanogram for each of the student's ears shows:
    - i. The height of the peak acoustic immittance is > 0.3 mmho, ml, or compliance; or
    - ii. The tympanometric width is < 250 daPa; and
  - b. The student responds to each frequency specified in R9-13-103(G)(2)(b)(i) through (iii) for each ear on which a hearing screening is performed; or

3. During a hearing screening using an OAE device, performed according to R9-13-103(G)(3), the OAE device indicates results that the student has passed the hearing screening for each ear.

**B.** For a student in a school's hearing screening population who does not receive an initial hearing screening specified in Table 13.1, an administrator shall ensure that the student receives the initial hearing screening not more than 45 school days after the date the student was expected to receive the initial hearing screening.

**C.** For a student in a school's hearing screening population who does not pass an initial hearing screening according to subsection (A), an administrator shall ensure that:

1. The student shall receive a second hearing screening no earlier than 10 school days and no later than 30 school days after the date of the hearing screening specified in R9-13-103;

2. If the hearing screening specified in R9-13-103(G)(2) was performed using both a tympanometer and pure tone audiometer, the second hearing screening for the student is performed using both a tympanometer and pure tone audiometer; and

3. If the hearing screening specified in R9-13-103(G)(3) was performed using an otoacoustic emissions device, the second hearing screening for the student is performed using an otoacoustic emissions device.

**D.** If a student does not pass the second hearing screening in subsection (C)(1) and (2), an administrator shall provide notification to the student's parent specified in R9-13-105.

#### **R9-13-105. Referral; Notification; Follow-up**

**A.** ~~If a school administrator finds that a student does not require a hearing screening under R9-13-102(C)(3) or (C)(4), the school administrator shall provide to the student's parent, within 10 days from the date the finding is made, a referral to have the student's current hearing status evaluated by an audiologist, including an electroacoustic analysis of any hearing aid or assistive listening device, unless there is documentation from an audiologist specifying a different evaluation schedule.~~

**B.** ~~If a screener finds any of the conditions listed in R9-13-103(A) and a student does not have a hearing screening:~~

1. ~~A school administrator shall provide to the student's parent, within 10 days from the date the condition is found, a referral to have the student's outer ears evaluated by a physician or primary care practitioner; and~~

2. ~~A screener shall perform the hearing screening on the student no earlier than 30 days and no later than 45 days from the date the screener finds the condition.~~

- C.** ~~If a student does not pass a second hearing screening or does not complete a second hearing screening within the time period required under R9-13-104(B), a school administrator shall provide to the student's parent, within 10 days from the date of the second hearing screening or from the date the period for completing a second hearing screening ends, a referral to have the student's current hearing status evaluated by one of the following:~~
- ~~1. An audiologist, a physician, or a primary care practitioner if the screener used only the four frequency, pure tone hearing screening method;~~
  - ~~2. A physician or primary care practitioner if the student did not pass the tympanometry portion, but passed the three frequency, pure tone portion of the hearing screening;~~
  - ~~3. An audiologist if the student did not pass the three frequency, pure tone portion, but passed the tympanometry portion of the hearing screening; or~~
  - ~~4. An audiologist, a physician, or a primary care practitioner if the screener used the otoacoustic emissions hearing screening method.~~
- D.** ~~A referral identified in subsection (C) is not required if a school provided audiologist:~~
- ~~1. Assesses a student's hearing status and the condition of the middle ear at the conclusion of a hearing screening; and~~
  - ~~2. Within 10 days from date of the assessment, provides the student's parent with a written diagnosis and recommendation for treatment, if applicable.~~
- E.** ~~A referral required under subsections (A), (B), or (C), shall include a form requesting the following:~~
- ~~1. The name, address, and telephone number of the student evaluated;~~
  - ~~2. The date of evaluation;~~
  - ~~3. An assessment of the condition of the outer ear, if applicable;~~
  - ~~4. An assessment of hearing status and the condition of the middle ear, if applicable;~~
  - ~~5. A diagnosis and recommendation for treatment, if applicable;~~
  - ~~6. The signature and title of the individual evaluating the student and completing the form; and~~
  - ~~7. A request that the individual completing the form or the student's parent return the completed form to the school.~~
- F.** ~~Under State Board of Education rule R7-2-401, a school administrator shall ensure that a student referred under subsections (A) or (C) is evaluated.~~
- G.** ~~If a school receives notice of a diagnosis that a student is deaf or hard of hearing from an audiologist, the school administrator shall notify, within 10 days from the date the notice of~~

~~diagnosis is received, each of the student's teachers and the person responsible for the school's special education services of the diagnosis.~~

**A.** An administrator shall provide a notification to parents of students identified in Table 13.1 that includes:

1. The information for hearing screening to be conducted during the school year, and
2. A reference to A.R.S. § 36-899.04 and information about the parent's right to object to their student receiving a hearing screening by submitting the document specified in R9-13-102(C) to the administrator.

**B.** If an administrator excludes a student from a hearing screening specified in R9-13-102(B)(3), the administrator shall provide a notification to the student's parent that:

1. Informs the parent, whose student wears a device listed in subsection (3)(a) through (c), that the student shall not receive a hearing screening;
2. Recommends the parent schedule an audiological evaluation for the student with a specialist;
3. Requests the parent in subsection (2) provide the administrator a copy of a specialist's audiological report dated within the past 12 months for the student's:
  - a. Hearing aid,
  - b. Assistive listening device, or
  - c. Other amplification device;
4. Informs a parent, who chooses for their student to not wear a device listed in subsection (3)(a) through (c), that the student shall receive a hearing screening unless the administrator receives documentation specified in R9-13-102(C) stating that the parent does not want their student to have a hearing screening; and
5. Informs a parent that a student may receive a hearing screening if an administrator does not have:
  - a. Documentation of an audiological report in subsection (3), or
  - b. Documentation specified in R9-13-102(C) stating that the parent does not want their student to have a hearing screening.

**C.** Except for a student in subsection (2)(a), within 10 school days after an initial hearing screening in subsection (A) has been completed, an administrator shall provide notification to a student's parent that includes:

1. The student's name; and
2. The reason why the student did not receive a hearing screening due to:
  - a. A visual condition of the outer ear specified in R9-13-103(C)(2), or

b. A behavioral condition specified in R9-13-103(E)(1).

**D.** Except for a student's second hearing screening in subsection (3)(b), within 10 school days after a student receives a second hearing screening specified in R9-13-104(C), an administrator shall provide notification to a student's parent that includes:

1. The student's name;
2. The type of hearing screening the student received, if received; and
3. The hearing screening results whether the student:
  - a. Did not pass; or
  - b. Was not screened due to:
    - i. A visual condition of the outer ear specified in R9-13-103(C)(2), or
    - ii. A behavioral condition specified in R9-13-103(E)(1).

**E.** If a student in subsections (C) or (D) has an audiological evaluation on file at the school that is dated within the past 12 months, the student will not receive a hearing screening.

**F.** If a student did not receive a hearing screening due to a reason identified in subsections (C)(2)(a), (D)(3)(a), or (D)(3)(b)(i), an administrator shall provide an immediate notification to the student's parent that includes:

1. The student's name;
2. The reason for the immediate notification;
3. A request that the parent contact a specialist to:
  - a. Examine the student's ears;
  - b. Perform an audiological evaluation; and
  - c. If the student uses any of the following, perform an:
    - i. Electroacoustic analysis of a hearing aid, an assistive listening device, or other amplification device; or
    - ii. Evaluation of a cochlear implant; and
4. A request that the parent provide to the administrator documentation received from the specialist who examined the student that includes:
  - a. The student's name;
  - b. The name of the specialist;
  - c. The date the specialist performed the services;
  - d. The type of services provided; and
  - e. If applicable:
    - i. The results of the examination of the student's ears,
    - ii. The results of the student's audiological evaluation, including diagnosis.

- iii. Whether there is hearing loss, including the type and degree of hearing loss,
- iv. The type of audiological equipment used to perform the audiological evaluation; and
- v. A recommendation for treatment.

**G.** Forty-five calendar days after sending a notification specified in subsection (F)(4), an administrator shall provide a follow-up notification to the student’s parent to verify whether the student received an audiological evaluation and if evaluated, provide diagnosis.

**H.** Within 10 school days after an administrator receives documentation from a specialist of a diagnosis that a student is deaf or hard of hearing, the administrator shall provide notification of the diagnosis, consistent with the privacy requirements in applicable law, to:

- 1. Each of the student’s teachers,
- 2. Other school personnel who interacts with the student, and
- 3. The persons responsible for determining the student’s eligibility for special education services under A.A.C. R7-2-401.

**R9-13-106. Equipment Standards**

**A.** An administrator shall ensure that audiological equipment used for hearing screenings is recommended by the American Academy of Audiology.

**B.** An administrator shall ensure that:

- 1. A pure tone audiometer is calibrated:
  - a. Not more than 12 months before the hearing screening is planned to occur, and
  - b. According to ANSI/ASA S3.6-2010 American National Standards Institution/Acoustical Society of America, Specification for Audiometers, incorporated by reference, on file with the Department, including no future editions or amendments, and available from the American National Standards Institution at <https://webstore.ansi.org>.
- 2. A tympanometer is calibrated:
  - a. Not more than 12 months before the hearing screening is planned to occur; and
  - b. According to ANSI/ASA S3.39-1987 (R2012) American National Standards Institution/Acoustical Society of America, American National Standard Specifications for Instruments to Measure Aural Acoustic Impedance and Admittance (Aural Acoustic Immittance), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the American National Standards Institution at <https://webstore.ansi.org>.

3. An OAE is calibrated:
  - a. Not more than 12 months before the hearing screening is planned to occur; and
  - b. According to the specifications of the otoacoustic emissions device's manufacturer, including:
    - i. Distortion product emission,
    - ii. No less than three test frequencies between 1 and 5 kHz,
    - iii. An f2/f1 ratio of 1.22,
    - iv. A L1/L2 levels of 65/55 dB SPL, and
    - v. A pass and fail criterion based on an emission-to-noise ratio.

**C.** A screener shall ensure that:

1. A pure tone audiometer:
  - a. Is inspected within one school day before the hearing screening is planned to occur; and
  - b. During the inspection in subsection (1)(a):
    - i. Had a power source and power indicator that were working,
    - ii. Had earphones that were free of noise or distortion that could interfere with a hearing screening,
    - iii. Had earphone cords that were connected securely to the pure tone audiometer and had no breaks, and
    - iv. Generated a signal at each frequency and intensity specified in R9-13-103(G)(1) that did not cross from one earphone to the other.
2. A tympanometer:
  - a. Is inspected within one school day before the hearing screening is planned to occur; and
  - b. During the inspection in subsection (2)(a):
    - i. Had no obstruction in the tympanometer's probe, and
    - ii. Generated a signal.
3. An OAE:
  - a. Is inspected within one school day before the hearing screening is planned to occur; and
  - b. During the inspection in subsection (3)(a):
    - i. Had no obstruction in the OAE's probe microphone, and
    - ii. Generated a signal.

## **R9-13-107. Screener Qualifications Records and Reporting Requirements**

- A.** An audiologist may perform a hearing screening.
- B.** An individual who is not an audiologist may perform a hearing screening only if the individual passes a hearing screener course that:
1. Includes 90 minutes of classroom instruction in the introduction to hearing covering:
    - a. Development of speech and language;
    - b. Anatomy and physiology of the ear;
    - c. Signs and prevention of hearing loss in children; and
    - d. A.R.S. Title 36, Chapter 7.2 and 9 A.A.C. 13, Article 1;
  2. Includes 120 minutes of classroom instruction in hearing screening covering:
    - a. Auditory development,
    - b. Early identification of hearing loss,
    - c. Principles of hearing screening,
    - d. Selection of hearing screening methods, and
    - e. Components of setting up a hearing screening program;
  3. Includes 75 minutes of classroom instruction in referral and reporting covering:
    - a. Results of a hearing screening,
    - b. Responses to a hearing screening outcome,
    - c. Procedures for recording and tracking,
    - d. Communication with parents,
    - e. Role of community resources, and
    - f. Reporting hearing screening results;
  4. For an individual who will perform a hearing screening using three frequency or four frequency, pure tone hearing screening, includes 120 minutes of classroom instruction covering:
    - a. Selecting and setting up a hearing screening site,
    - b. Performing a pure tone hearing screening, and
    - c. Identifying children who need referral and evaluation;
  5. For an individual who will perform a hearing screening using tympanometry with three frequency, pure tone hearing screening, includes 60 minutes of classroom instruction covering:
    - a. The anatomy and functions of the middle ear,
    - b. What tympanometry measures and identifies,
    - c. Using a tympanometer,

- d. ~~Performing a tympanometry hearing screening, and~~
  - e. ~~Identifying children who need referral and evaluation;~~
6. ~~For an individual who will perform a hearing screening using otoacoustic emissions hearing screening, includes 60 minutes of classroom instruction covering:~~
- a. ~~What otoacoustic emissions identify and measure,~~
  - b. ~~Using otoacoustic emissions equipment,~~
  - e. ~~Performing an otoacoustic emissions hearing screening, and~~
  - d. ~~Identifying children who need referral and evaluation;~~
7. ~~Requires an individual to pass the course by scoring 80% or more on an examination that tests what the individual has learned;~~
8. ~~Is taught by an individual who:~~
- a. ~~Is an audiologist, or~~
  - b. ~~Meets the screener qualifications in subsection (B) or (C) and has performed at least 50 hearing screenings within 24 months before teaching a hearing screener course; and~~
9. ~~Provides an individual who passes the course with a certificate of completion that includes:~~
- a. ~~The individual's name;~~
  - b. ~~Whether the following were completed:~~
    - i. ~~Introduction to hearing,~~
    - ii. ~~Hearing screening,~~
    - iii. ~~Referral and reporting,~~
    - iv. ~~Pure tone hearing screening,~~
    - v. ~~Tympanometry hearing screening, and~~
    - vi. ~~Otoacoustic emissions hearing screening;~~
  - e. ~~An attestation that the course meets the requirements in subsection (B) or (C); and~~
  - d. ~~The name and signature of the individual who taught the course.~~
- C.** ~~Every five years after completing a hearing screener course described in subsection (B), a screener who is not an audiologist shall pass a hearing screener course that:~~
- 1. ~~Includes 195 minutes of classroom instruction covering the material required under subsections (B)(1), (B)(2), and (B)(3);~~

2. ~~For an individual who will perform a hearing screening using three frequency or four frequency, pure tone hearing screening, includes 60 minutes of classroom instruction covering the material required under subsection (B)(4);~~
3. ~~For an individual who will perform a hearing screening using tympanometry with three frequency, pure tone hearing screening, includes 30 minutes of classroom instruction covering the material required under subsection (B)(5);~~
4. ~~For an individual who will perform a hearing screening using otoacoustic emissions hearing screening, includes 30 minutes of classroom instruction covering the material required under subsection (B)(6); and~~
5. Meets the requirements in subsections (B)(7), (B)(8), and (B)(9).

**D.** Before performing a hearing screening, an individual who passes a hearing screener course described in subsection (B) or (C) shall give a copy of the certificate of completion described in subsection (B)(9) to the school.

**E.** ~~An individual who does not meet the screener qualifications in subsection (A), (B), or (C) may perform a four frequency, pure tone hearing screening, other than a second hearing screening required under R9-25-104(B), only under the supervision of an individual who meets the screener qualifications in subsection (A), (B), or (C).~~

**A.** An administrator shall obtain from a screener:

1. The screener's license number, if the screener is an audiologist; or
2. A copy of the screener's certificate of completion dated within four years before the date the hearing screening is planned to occur.

**B.** A student's record shall include:

1. The dates and results of each hearing screening performed on the student;
2. An objection to a hearing screening made by the student's parent specified in R9-13-102(C);
3. A request for a hearing screening made by an individual listed in Table 13.1;
4. A written diagnosis received by an administrator from a specialist specified in R9-13-105(H) that a student is deaf or hard of hearing;
5. If an administrator received a written diagnosis in subsection (4), the name of each individual specified in R9-13-105(H) that received notification of the student's diagnosis and the date notified; and
6. If an administrator notified a student's parent according to R9-13-105:
  - a. A copy of the notification; or
  - b. Documentation that contains:

- i. The reason for the notification.
- ii. The date of notification, and
- iii. Whether the administrator recommended that the student have an audiological evaluation completed by a specialist.

**C.** Between April 1 and June 30 of each school year, an administrator shall submit to the Department in a Department-provided format:

- 1. The school:
  - a. Name,
  - b. Address, and
  - c. Telephone number;
- 2. The name of the school district, if applicable; and
- 3. For hearing screenings conducted at the school during the school year:
  - a. The name of each screener who performed hearing screenings;
  - b. The screener's audiological license number, if applicable;
  - c. A copy of the screener's certificate of completion specified in R9-13-108(F) or R9-13-108(I)(3), if applicable;
  - d. The type of audiological equipment used to conduct the hearing screenings;
  - e. The date the audiological equipment was calibrated;
  - f. The name and title of the individual submitting the information;
  - g. The date the information is submitted;
  - h. Whether the hearing screenings for students identified in Table 13.1 were conducted within the first 45 calendar days of the school year;
  - i. The number of students grouped by:
    - i. The grades listed in Table 13.1, and
    - ii. Enrollment in special education;
  - j. The number of students who:
    - i. Were enrolled at the start of the school year ~~at the time of~~ prior to the first hearing screening provided to students,
    - ii. Were excluded from the school's hearing screening population as specified in R9-13-102(B) and Table 13.1,
    - iii. Received an initial hearing screening,
    - iv. Did not pass an initial hearing screening,
    - v. Received a second hearing screening,
    - vi. Did not pass a second hearing screening, and

vii. Were first identified as deaf or hard of hearing; and

k. The number of students for whom:

i. An administrator provided notification to a student's parent, as specified in R9-13-105; and

ii. An administrator received documentation during the school year from a student's specialist related to an examination, audiological evaluation, electroacoustic analysis, or evaluation of the student's cochlear implant.

**D.** An administrator shall retain the information in:

1. Subsection (A) for at least three years after the date that the hearing screening occurred.

2. Subsection (B) for three school years after fiscal year of last attendance, according to Arizona State Library, Archives and Public Records, General Records Retention Schedule for All Arizona School Districts and Charter Schools Student Records.

**R9-13-108. Equipment Standards Screener Qualifications**

**A.** ~~A school administrator shall ensure that a pure tone audiometer used to perform a three frequency or four frequency, pure tone hearing screening is:~~

1. ~~Calibrated every 12 months according to the American National Standard Specification for Audiometers, S3.6-1996, Standards Secretariat, c/o Acoustical Society of America, 120 Wall Street, 32nd Floor, New York, New York 10005-3993, January 12, 1996, incorporated by reference in R9-16-209(B)(1); and~~

2. ~~Inspected within 24 hours before use to ensure that:~~

a. ~~The calibration complies with subsection (A)(1);~~

b. ~~The power source and power indicator are working;~~

c. ~~The earphone cords are securely connected and have no breaks;~~

d. ~~Each frequency and intensity required under R9-13-103(C)(1) is present;~~

e. ~~A signal does not cross from one earphone to the other, and~~

f. ~~Each earphone is free of noise or distortion that could interfere with a hearing screening.~~

**B.** ~~A school administrator shall ensure that a tympanometer used to perform the tympanometry portion of a hearing screening:~~

1. ~~Is calibrated every 12 months according to the American National Standard Specifications for Instruments to Measure Aural Acoustic Impedance and Admittance, S3.39-1987, Standards Secretariat, Acoustical Society of America, 335 East 45th Street, New York, New York 10017-3483, October 5, 1987, not including any later amendments~~

or editions, incorporated by reference and on file with the Department and the Office of the Secretary of State; and

2. ~~Is inspected within 24 hours before use to ensure that the calibration complies with subsection (B)(1).~~

**C.** ~~A school administrator shall ensure that otoacoustic emissions equipment used to perform an otoacoustic emissions hearing screening is:~~

1. ~~Calibrated every 12 months according to manufacturer's specifications; and~~
2. ~~Inspected within 24 hours before use to ensure that:~~
  - a. ~~The calibration complies with manufacturer's specifications,~~
  - b. ~~No obstruction is in the probe microphone, and~~
  - e. ~~The test signal is present.~~

**A.** An individual may be a screener:

1. If the individual is an audiologist, or
2. If the individual:
  - a. Is at least 18 years of age;
  - b. Has a high school diploma or a general equivalency diploma;
  - c. Has the ability to recognize a student's response to hearing a range of tones at different pitches and volumes; and
  - d. Has a current certificate of completion specified in subsection (F).

**B.** For an individual, who is not an audiologist, to become a screener, the individual shall complete classroom instruction for pure tone audiometry provided by a trainer:

1. Introduction to hearing screening for children, including the:
  - a. Development of speech and language,
  - b. Anatomy and physiology of the ear,
  - c. Signs of hearing loss in children,
  - d. Prevention of hearing loss in children,
  - e. Otitis media, and
  - f. Infection control;
2. Essentials for hearing screening children, including:
  - a. Auditory development;
  - b. Rationale for early identification of hearing loss;
  - c. When, how, and on whom hearing screening is performed; and
  - d. How to set up a hearing screening, including the selection of a method to use for hearing screening and a location to conduct hearing screening;

3. Hearing screening protocols, including:
  - a. Possible results of hearing screening;
  - b.  Screener requirements specified in this Article;
  - c. Procedures for tracking students expected to receive hearing screening and recording hearing screening results;
  - d. Notification of and communication with the parents of students;
  - e. The information that a parent of a student who does not pass a hearing screening is requested to obtain from the student’s specialist and provide to the student’s school;
  - f. When and to whom a student’s hearing loss is required to be reported;
  - g. Procedures for reporting hearing screening results to the Department;
  - h. What resources are available to the parent of a student who does not pass hearing screening; and
  - i. Requirements in A.R.S. Title 36, Chapter 7.2 and requirements in this Article in addition to screener requirements; and
4. Audiological equipment, including:
  - a. A pure tone audiometer:
    - i. How a pure tone audiometer works;
    - ii. Checking the pure tone audiometer and earphones before performing hearing screening;
    - iii. Earphone placement;
    - iv. Performing hearing screening using a pure tone audiometer;
    - v. Identifying students who need a second hearing screening; and
    - vi. Identifying students for whom notification of a parent is required; or
  - b. An otoacoustic emission device:
    - i. How an otoacoustic emission device works;
    - ii. Why and when it is appropriate to use an otoacoustic emissions device ~~is~~ used during hearing screening;
    - iii. Performing a hearing screening using an otoacoustic emissions device with a remote probe;
    - iv. Identifying students who need a second hearing screening; and
    - v. Identifying students for whom notification of a parent is required.

- C.** An individual who has completed the hearing screening instruction in subsection (B) may request training in the use of a tympanometer by completing the following classroom instruction provided by a trainer:
1. How a tympanometer works;
  2. Why and when it is appropriate to use a tympanometer during hearing screening;
  3. The anatomy and functions of the middle ear and Eustachian tube;
  4. How to use a tympanometer;
  5. Identifying students who need a second hearing screening; and
  6. Identifying students for whom notification of a parent is required.
- D.** Obtain a score of at least 80% on a written examination that covers the classroom instruction specified in subsection (B) or (C).
- E.** Demonstrate competency in the use of the audiological equipment specified in subsection (B) or (C) that an individual received classroom instruction.
- F.** Obtain a certificate of completion in a Department-provided format from the trainer who provided the classroom instruction, examination, and competency assessment specified in (B) through (E), as applicable, that includes:
1. The individual's name;
  2. The hearing screening methods specified in subsections (B) or (C) completed by the individual;
  3. The date the individual completed the classroom instruction in subsection (B) or (C);
  4. The date the individual completed the hearing screening:
    - a. Examination; and
    - b. Assessment, including the type of audiological equipment;
  5. The certificate of completion issue date;
  6. An attestation that the classroom instruction provided to the individual meets the requirements in subsection (B) or (C); and
  7. The trainer's printed name and date issued.
- G.** A screener's certificate of completion expires four years from the issue date indicated on the certificate of completion specified in subsection (F).
- H.** Prior to the expiration date of a certificate of completion, a screener shall complete the requirements in subsection (I) to renew the screener's certificate of completion.
- I.** A screener, who is not an audiologist, wanting to renew a certificate of completion shall:
1. Complete two hearing screening continuing education units each year:
    - a. Specified by the Department according to subsection (J), and

- b. Applicable to the type of audiological equipment that the screener uses when performing a hearing screening;
  - 2. As provided by a trainer:
    - a. Complete four hours of classroom instruction related to:
      - i. Development of speech and language,
      - ii. Essentials for hearing screening children, and
      - iii. Hearing screening protocols;
    - b. Obtain a score of at least 80% on a written examination that covers the hearing screening requirements in subsection (a); and
    - c. Demonstrate competency in the use of the audiological equipment consistent with the hearing screening training received in subsection (1) and (2);
  - 3. Obtain a certificate of completion in a Department-provided format from the trainer who provided classroom instruction, the examination, and competency assessment in subsection (2) that includes:
    - a. The screener's name;
    - b. The hearing screening methods specified in subsection (1);
    - c. The date the screener completed the methods in subsection (1);
    - d. The date the screener completed the hearing screening:
      - i. Examination; and
      - ii. Assessment, including the type of audiological equipment;
    - e. The certificate of completion issue date;
    - f. An attestation that the classroom instruction provided to the screener meets the requirements in subsections (1) and (2); and
    - g. The trainer's printed name.
- J.** By January 1 of each calendar year, the Department shall provide a list of Department-approved continuing education courses.
- K.** An individual who does not score at least 80% on a written examination in subsection (D) may retake the written examination. If an individual does not score at least 80% on the second written examination, the individual shall repeat classroom instruction in subsection (B) or (C) before taking a third written examination.
- L.** A screener, who does not score at least 80% on a written examination for renewal in subsection (I), may retake the written examination. A screener, who does not score at least 80% on the second written examination, shall repeat the classroom instruction in subsection (I)(1) and (2) before taking a third written examination.

**M.** An individual who is not a screener:

1. May use a pure tone audiometer to perform an initial three-frequency, pure tone hearing screening for a student, specified in R9-13-103(G)(1), under the supervision of a screener; and
2. Shall not perform a hearing screening:
  - a. For a student who did not pass an initial hearing screening.
  - b. Using a combination of a tympanometer and a pure tone audiometer according to R9-13-103(G)(2); or
  - c. Using an OAE specified in R9-13-103(G)(3).

**R9-13-109. Recordkeeping, Reporting Requirements Trainer Eligibility**

- A.** A school administrator shall retain, for Department review and inspection, a written record of:
- ~~1.~~ ~~The date and results of a student's hearing screening for no less than three complete school years beginning on the first July 1 after the student's last date of attendance at the school, and~~
  - ~~2.~~ ~~All calibration dates for a piece of hearing screening equipment currently used in the school.~~
- B.** ~~By June 30th of each year, a school administrator shall submit to the Department the following information for the school year ending that June 30th:~~
- ~~1.~~ ~~On a form available from the Department, the number of students by grade in each of the following categories:~~
    - ~~a.~~ ~~Were enrolled at the time of a first hearing screening,~~
    - ~~b.~~ ~~Did not have a first hearing screening under R9-13-102(C),~~
    - ~~c.~~ ~~Had a first hearing screening,~~
    - ~~d.~~ ~~Did not pass a first hearing screening,~~
    - ~~e.~~ ~~Had a second hearing screening,~~
    - ~~f.~~ ~~Did not pass a second hearing screening,~~
    - ~~g.~~ ~~Were evaluated by an audiologist,~~
    - ~~h.~~ ~~Were evaluated by a physician or a primary care practitioner,~~
    - ~~i.~~ ~~Were first diagnosed as deaf or hard of hearing during the current school year, and~~
    - ~~j.~~ ~~Were diagnosed as deaf or hard of hearing during a prior school year; and~~
  - ~~2.~~ ~~The name of each individual who performed a hearing screening in the school and:~~
    - ~~a.~~ ~~The individual's license number to practice audiology, or~~

b. ~~Evidence that the individual successfully completed a hearing screening course described in R9-13-107(B) or (C).~~

**A.** An individual is eligible to be a trainer if the individual meets at least one of the following:

1. Has completed at least 30 semester credits at an accredited college or university related to audiology and speech-language pathology or the equivalent credits from a college or university from outside the United States or its territories verified by a Department-approved third party evaluation service;
2. Has completed at least two years of employment in a position directly related to and providing assistance in the practice of audiology and speech-language pathology;
3. Is currently licensed in this state as an audiologist according to A.R.S. Title 36, Chapter 17; or
4. Is currently a screener who has maintained a hearing screener certificate of completion for the previous five years.

**B.** In addition to subsection (A), an individual who meets the requirement in:

1. Subsection (1) or (2), has completed at least 100 hearing screenings within the previous 12 months from the date of request specified in R9-13-110(C)(9).
2. Subsection (3), has completed at least 25 hearing screenings within the previous 12 months from the date of request specified in R9-13-110(C)(9).
3. Subsection (4), has completed 3,000 hearing screenings within the previous five years from the date of request specified in R9-13-110(C)(9).

**C.** Prior to the expiration date of a trainer certificate of completion, a trainer is eligible to renew a certificate of completion if the trainer demonstrates the trainer provided at least two hearing screening trainings for each year during the five-year period that a certificate of completion is valid.

**D.** The practice of a trainer includes:

1. Providing classroom instruction specified in R9-13-108(B) and (C) in a classroom;
2. Training individuals in hearing screening skills, procedures, and techniques specified in R9-13-108(B) and (C);
3. Observing and assessing individuals and screeners in the operations of audiological equipment specified in R9-13-108(E);
4. Administering to individuals a hearing screening examination specified in R9-13-108(D);
5. Entering an individual's or screener's information in the Department's hearing screening database for issuance of a certificate of completion; and

6. Providing, if available to the public, notice to the Department indicating what, where, and when classroom instruction, examination, or assessment of competency are scheduled to be provided to individuals to become a screener specified in R9-13-110(C)(8) or R9-13-112(C)(4).

**E.** A trainer who provides instruction to an individual seeking a screener certificate of completion shall:

1. Ensure that:

a. Eight hours of classroom instruction is provided, and

b. The types of classroom instruction are consistent with R9-13-108; and

2. Establish a hearing screening record in the Department's hearing screening database for each individual seeking a certificate of completion as a screener that includes:

a. The individual's:

i. Name,

ii. Address,

iii. E-mail address, and

iv. Telephone number;

b. The date the certificate of completion expires;

c. The address where the classroom instructions, examination, and assessment were held;

d. If applicable, the name of a sponsoring organization, such as a school, school district, or other public agency; and

e. Documentation indicating when classroom instruction, examination, and assessment were provided.

**F.** A trainer who provides instruction to a screener who is seeking renewal of certificate of completion shall:

1. Ensure that:

a. A hearing screening continuing education units are completed,

b. Four hours of classroom instruction is provided, and

c. The types of classroom instruction are consistent with R9-13-108(I); and

2. Update the screener's record in the Department's hearing screening database for each screener seeking renewal of certificate of completion that includes:

a. The screener's:

i. Name,

ii. Address,

- iii. E-mail address, and
- iv. Telephone number;
- b. The date the certificate of completion expires;
- c. The address where the classroom instructions, examination, and assessment were held;
- d. If applicable, the name of a sponsoring organization, such as a school, school district, or other public agency; and
- e. Documentation indicating when classroom instruction, examination, and assessment were provided.

**G.** A trainer shall:

- 1. Comply with A.R.S. §§ 36-899 through 36-899.04, and
- 2. Comply with this Article.

**R9-13-110. Trainer Certificate of Completion Request**

**A.** An individual may apply for a trainer certificate of completion if the individual meets the eligibility requirements specified in R9-13-109(A) and (B).

**B.** An individual applying for a trainer certificate of completion shall submit a request to the Department at least 30 days prior to November 1 of a calendar year.

**C.** An individual shall provide a request for a trainer certificate of completion to the Department in a Department-provided format that includes:

- 1. The individual's:
  - a. Name,
  - b. Address,
  - c. E-mail address, and
  - d. Telephone number;
- 2. If applicable, the individual's former names;
- 3. If the individual has completed thirty semester credits specified in R9-13-109(A)(1), the:
  - a. Name of the accredited college or university attended,
  - b. Class title for each class completed, and
  - c. Number of semester credits for each class;
- 4. If the individual has completed two years of employment specified in R9-13-109(A)(2), the:
  - a. Employer's name,
  - b. Individual's position and description of responsibilities, and
  - c. Months and years of employment;

5. If the individual is a licensed audiologist specified in R9-13-109(A)(3), the:
    - a. Audiologist's license number, and
    - b. Date of expiration;
  6. If the individual is a screener specified in R9-13-109(A)(4), who has maintained a hearing screener certificate of completion for the previous five years, the:
    - a. Names of the school districts where the screener provided hearing screenings, and
    - b. Screener's certification of completion date of expiration;
  7. Whether the individual completed the hearing screenings specified in R9-13-109(B);
  8. An attestation that the individual affirms:
    - a. To provide, if available to the public, notice of hearing screening instruction, examination, or assessment of competency specified in R9-13-109(D) to the Department 30 calendar days prior to providing to individuals to become a screener;
    - b. To provide information for each hearing screening training specified in R9-13-109(C); and
    - c. The information provided in the request for certificate of completion is true and accurate; and
  9. The individual's printed name and date of signature.
- D.** Within 10 calendar days from the date the Department receives an individual's request for a trainer certificate of completion, the Department shall send a notification to the individual that:
1. The individual may register to take classroom instruction and written examination, and
  2. How the individual may register.
- E.** If the Department determines there is a need for additional trainers prior to the November 1 submission date in subsection (B), the Department shall provide:
1. A notice to the public that trainer certificate of completion requests will be accepted.
  2. When an individual may submit a trainer certificate of completion request.
- F.** If the Department determines not to accept any trainer certificate of completion requests in subsection (B), the Department shall provide:
1. A notice to the public that no trainer certificate of completion requests will be accepted.
  2. The notice 30 days prior to the November 1 submission date in subsection (B).

**R9-13-111. Trainer Instruction, Examination, and Observation**

- A.** An individual requesting to become a trainer shall complete required classroom instruction, written examination, and observation within 160 calendar days from the date provided in the Department's notification specified in R9-13-110(D).
- B.** An individual, who has received notification from the Department specified in R9-13-110(D), shall attend classroom instruction provided by the Department or designee that includes:
1. Adult education learning strategies,
  2. Sensory curriculum,
  3. Hearing screening protocols, confirm
  4. Audiological equipment, and
  5. Written examination.
- C.** An individual who completes classroom instruction and written examination specified in subsection (B) shall:
1. Pass a written examination with a score of 80% or more;
  2. Obtain written confirmation from the Department or designee that indicates the individual's competency in the use of each type of audiological equipment in subsection (B)(4);
  3. Submit to the Department, in a Department-provided format, a request to schedule hearing screening training observation that includes:
    - a. The individual's:
      - i. Name,
      - ii. Address,
      - iii. E-mail address, and
      - iv. Telephone number;
    - b. The date the individual passed the written examination in subsection (C)(1); and
    - c. The date the individual is requesting the hearing screening training observation;  
and
  4. Submit the request to take the hearing screening training observation 30 calendar days prior to the individual's requested schedule hearing screening training observation in subsection (3)(c).
- D.** Within 10 calendar days from the date the Department receives an individual's request to schedule a hearing screening training observation, the Department shall send a notification to the individual that:
1. The individual may register for hearing screening training observation, and

2. How the individual may register.

- E.** An individual who completes hearing screening training observation in subsection (D) shall:
1. Pass the hearing screening training observation with a score of 80% or more; and
  2. Obtain a trainer certificate of completion from the Department or designee.
- F.** Within 10 calendar days from the date an individual passed the hearing screening training observation with a score of 80% or more, the Department shall send the individual a trainer certificate of completion.
- G.** An individual, who does not score at least 80% on a written examination in subsection (D), may take a second written examination no later than 30 calendar days after having taken the first written examination.
- H.** If an individual does not score at least 80% on the second written examination, the individual shall repeat the classroom instruction in subsection (B) before taking a third written examination.
- I.** An individual who does not pass the written examination in subsection (H) shall not be issued a certificate of completion.
- J.** An individual, who does not pass a training observation in subsection (E), may take a second training observation no later than 60 calendar days after having taken the first training observation.
- K.** If an individual does not pass the second training observation, the individual shall repeat the classroom instruction in subsection (B) and written examination in subsection (C) before taking a third training observation.
- L.** An individual who does not pass the training observation in subsection (K) shall not be issued a certificate of completion.
- M.** If an individual does not complete the hearing screening training observation within 160 calendar days in subsection (E), the individual shall reapply for a trainer certificate of completion as specified in R9-13-110.
- N.** By October 1 of each year, if the Department accepts requests specified in R9-13-110(B), the Department will provide a list of Department-approved core curriculum and applicable material related to classroom instruction in subsection (B).
- O.** An individual, who does not pass the written examination or pass the training observation may file an appeal according to A.R.S. Title 41, Chapter 6, Article 10.

**R9-13-112. Trainer Certificate of Completion Renewal**

- A.** A trainer's certificate of completion expires five years from the issue date specified on the certificate of completion.
- B.** Except as specified in R9-13-113(H), a trainer shall renew the trainer's certificate of completion every five years.

**C.** At least 60 calendar days before the expiration date of a certificate of completion, a trainer shall submit to the Department a renewal request in a Department-provided format that contains:

1. The trainer's:
  - a. Name,
  - b. Address,
  - c. E-mail address, and
  - d. Telephone number;
2. For each continuing education course specified in R9-13-113(B) and (C), the following:
  - a. The course title,
  - b. A course description,
  - c. The name of the individual providing the continuing education course,
  - d. The date the continuing education course was completed, and
  - e. The total number of continuing education hours attended;
3. For each hearing screening training specified in R9-13-109(C), the following:
  - a. Title of the classroom instruction, examination, or assessment provided, as applicable;
  - b. Date and location of the classroom instruction, examination, or assessment provided in subsection (a); and
  - c. Number of attendees;
4. An attestation that the trainer affirms:
  - a. The continuing education courses specified in subsection (2) are applicable and consistent with the Department's approved continuing education courses;
  - b. To provide, if available to the public, notice of hearing screening instruction, examination, or assessment of competency specified in R9-13-109(D) to the Department 30 calendar days prior to the trainer providing to individuals to become a screener; and
  - c. The information in the request for renewal is true and accurate; and
5. The trainer's printed name and date of signature.

**D.** Within 10 calendar days from the date a trainer submits a renewal request, the Department shall send the trainer a certificate of completion.

**E.** Except as specified in R9-13-113, a trainer who does not submit a trainer renewal request according to this Section 60 calendar days prior to the expiration date of the trainer's certificate of completion, the trainer's certificate of completion expires.

**F.** Except as specified in R9-13-113, a trainer who does not complete required continuing education specified in subsection (C)(2) shall apply for a trainer certificate of completion specified in R9-13-110 and R9-13-111.

**R9-13-113. Trainer Continuing Education**

**A.** By January 1 of each calendar year, the Department shall provide a list of Department-approved continuing education courses.

**B.** Each calendar year, a trainer, who is not an audiologist, shall complete 10 continuing education units approved by the Department.

**C.** Every two calendar years, a trainer, who is an audiologist, shall complete 20 continuing education units approved by the Department.

**D.** A trainer shall report continuing education units completed in subsection (B) and (C) as required in a trainer renewal request specified in R9-13-112(C).

**E.** By November 1 of a calendar year or every two calendar years, as applicable, a trainer, who was prevented from completing the required continuing education units due to a personal illness or an immediate family member's illness during at least six continuous months of the preceding 12 months, may request to defer continuing education units by submitting to the Department:

1. A notification in a Department-provided format that contains:

a. The trainer's:

i. Name,

ii. Address,

iii. E-mail address, and

iv. Telephone number;

b. A statement regarding the trainer's personal or immediate family member's illness;

c. The number of continuing education units the trainer is requesting to defer;

d. The date submitted; and

e. An attestation that the trainer affirms the information provided in the request to deter continuing education is true and accurate; and

2. The trainer's printed name and date of signature.

**F.** If a trainer completed any continuing education units during a calendar year in subsection (B) or every two calendar years in subsection (C), as applicable, report the completed continuing education units specified in R9-12-112(C)(2).

**G.** A trainer who defers continuing education units shall obtain the deferred continuing education during the first 180 calendar days of the subsequent calendar year.

**H.** A trainer called to active military service shall:

1. Submit a written notice of renewal extension to the Department that includes:
  - a. The trainer's:
    - i. Name,
    - ii. Address,
    - iii. E-mail address, and
    - iv. Telephone number;
  - b. A statement stating the reason for the notice of renewal extension;
  - c. The trainer's signature, including date of signature; and
  - d. A copy of the trainer's deployment documentation;
2. Retain trainer certificate of completion for the term of service or deployment plus 180 calendar days;
3. Defer the requirement for completing the continuing education specified in R9-13-112 for the term of service or deployment plus 180 calendar days; and
4. Submit a renewal request according to R9-13-112 after the term of service or deployment plus 180 calendar days.

**R9-13-114.** **Requesting a Change**

A trainer requesting a change to personal information shall submit to the Department in a Department-provided format a written notice stating the information to be changed and indicating the new information within 30 calendar days after the effective date of the change.

**R9-13-115.** **Requirement for Screener or Trainer Certificate of Completion Issued Before Article Effective Date**

- A.** If a screener's certificate of completion expires before June 30, 2020, the screener whose certificate of completion includes pure tone audiometry or OAE and wishes to retain screener certificate of completion, shall complete training, examination, and assessment specified in R9-13-108 prior to the certificate's date of expiration.
- B.** If a screener's certificate of completion expires after June 30, 2020, the screener whose certificate of completion includes pure tone audiometry or OAE and wishes to retain screener certificate of completion, shall complete training, examination, and assessment specified in R9-13-108 prior to June 30, 2020.
- C.** A screener, whose certificate of completion includes both pure tone audiometry and OAE, shall renew current certificate of completion within 30 days prior to the expiration date of the certificate.

**D.** A trainer, who wishes to retain trainer certificate of completion and whose certificate of completion was issued before the effective date of this Article, shall submit a certificate of completion request specified in R9-13-110 no later than 30 days prior to November 2019.

certificates due for renewal? 30 days prior to the expiration date, or prior to June 30, 2020?

Thank you for clarifying.

#1  
On Tue, Apr 16, 2019 at 10:58 AM Teresa Koehler <teresa.koehler@azdhs.gov> wrote:  
Morning Ms. Gregory,

Provided there are no substantive changes made to the rules prior to submitting the Notice of Final Rulemaking (Notice), the Department hopes that the Governor's Regulatory Review Council will approve the Notice during their July 2nd Approval Meeting. If approved, the Notice will become effective immediately at the time the Notice is filed with the Secretary of State. The Department plans to file the Notice on July 3rd, 2019. Also, remember the re-certification requirements for screeners and trainers are in R9-13-115. Thank you. Have a great day!

Best regards,

Teresa

**R9-13-115. Requirement for Screener or Trainer Certificate of Completion Issued Before Article Effective Date**

- A. If a screener's certificate of completion expires before June 30, 2020, the screener whose certificate of completion includes pure tone audiometry or OAE and wishes to retain screener certificate of completion, shall complete training, examination, and assessment specified in R9-13-108 prior to the certificate's date of expiration.
- B. If a screener's certificate of completion expires after June 30, 2020, the screener whose certificate of completion includes pure tone audiometry or OAE and wishes to retain screener certificate of completion, shall complete training, examination, and assessment specified in R9-13-108 prior to June 30, 2020.
- C. A screener, whose certificate of completion includes both pure tone audiometry and OAE, shall renew current certificate of completion within 30 days prior to the expiration date of the certificate.
- D. A trainer, who wishes to retain trainer certificate of completion and whose certificate of completion was issued before the effective date of this Article, shall submit a certificate of completion request specified in R9-13-110 no later than 30 days prior to November 2019.

#1  
On Mon, Apr 15, 2019 at 2:34 PM Rebecca Gregory <rebecca.gregory@tempeschools.org> wrote:  
Hi, Teresa.

When is it anticipated that the new rules will take effect? This coming school year (2019-2020), or after that?

(OLD) On Mon, Mar 11, 2019 at 12:31 PM Teresa Koehler <teresa.koehler@azdhs.gov> wrote:  
Hello Stakeholders,

On March 7, 2019, the Department filed the Hearing Screening Notice of Proposed Rulemaking (NPR) with the Secretary of State (SOS). The SOS is required to publish the NPR in the Arizona Administrative Register by March 29, 2019. Once published, a 30-day comment period and an oral proceeding will follow as specified in the NPR. Provided there are no substantive changes made to the rules during this time, the Department plans to submit the Notice of Final Rulemaking (NFR) to the Governor's Regulatory Review Council (GRRC) before May 21, 2019. After GRRC approves the NFR, the Department will post the approved NFR to the Rulemaking In Progress - Hearing Screening webpage. Thank you for participating in the hearing screening rulemaking; your comments have made a difference and are appreciated. Best regards,

**Re: Update: Hearing Screening Rulemaking**

1 message

**Rebecca Gregory** <rebecca.gregory@tempeschools.org>

Thu, Apr 18, 2019 at 8:29 AM

To: Sonia Samaniego <sonia.samaniego@azdhs.gov>

Cc: Teresa Koehler <teresa.koehler@azdhs.gov>, Katharine Levandowsky <katharine.levandowsky@azdhs.gov>

Thank you.

Last #3  
response

On Thu, Apr 18, 2019 at 8:27 AM **Sonia Samaniego** <sonia.samaniego@azdhs.gov> wrote:  
Good Morning,

We will be sending out communication in the next week to all trainers that will provide clarification on the upcoming changes for hearing screenings.

Thank you, :-)

*Sonia Samaniego*

Education and Advocacy Program Manager  
Office for Children with Special Health Care Needs  
Arizona Department of Health Services | Bureau of Women and Children's Health  
150 N. 18<sup>th</sup> Ave., Ste. 320 Phoenix, AZ 85007  
602-542-2035 Direct | 480-550-1783 Mobile|602-542-2589 Fax  
[Sonia.Samaniego@azdhs.gov](mailto:Sonia.Samaniego@azdhs.gov)  
*Health and Wellness for all Arizonans*

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On Thu, Apr 18, 2019 at 8:21 AM Rebecca Gregory <rebecca.gregory@tempeschools.org> wrote:

Thank you.

I have a few staff who have done pure tones first and then OAE's at a later date for various reasons. So, the expiration dates are not the same though they are certified in both methods, and they have 2 separate certificates of completion. Are they still considered under line C, with 30 days prior to the expiration of the pure tones (which is the earlier of the 2 to expire).

On Wed, Apr 17, 2019 at 10:05 AM **Teresa Koehler** <teresa.koehler@azdhs.gov> wrote:

Morning ... I believe the answer to your question is "yes" based on "...staff are certified in both pure tone and OAEs." However, please verify that staff certificates of completion specifically list successful completion of "Pure Tone Screening" and "OAE Screening." If both are listed on the certificate of completion, then a screener, as indicated in subsection (C), "shall renew...within 30 days prior to the expiration date of the certificate." Hope this helps. Teresa.

On Tue, Apr 16, 2019, at 11:32 AM **Rebecca Gregory** <rebecca.gregory@tempeschools.org> wrote:

Thank you.

I am not sure I understand this.

All of my trained staff are certified in both pure tone and OAE's. Does Line C then apply to them, as opposed to lines A or B (where the word "or" is used?). If I am correct in this, when then are their

#2

#2



Teresa Koehler <teresa.koehler@azdhs.gov>

**Re: Update: Hearing Screening Rulemaking**

1 message

**Katharine Levandowsky** <katharine.levandowsky@azdhs.gov>

Wed, Apr 17, 2019 at 10:44 PM

To: Teresa Koehler <teresa.koehler@azdhs.gov>

Cc: Rebecca Gregory <rebecca.gregory@tempeschools.org>, Sonia Samaniego <sonia.samaniego@azdhs.gov>

#3 Yes there will be a revised curriculum for trainers to use.

**Katharine Levandowsky**

Office Chief, Office for Children with Special Health Care Needs  
Arizona Department of Health Services | Bureau of Women's and Children's Health  
Office Direct (602) 542-2528  
Mobile (480) 250-8913  
[Katharine.Levandowsky@azdhs.gov](mailto:Katharine.Levandowsky@azdhs.gov)

*Health and Wellness for all Arizonans*

#3 On Wed, Apr 17, 2019 at 12:24 PM Teresa Koehler <teresa.koehler@azdhs.gov> wrote:

Hi Ms. Gregory - your question regarding revised curriculum for trainers is a program question so am going to refer you to Kathy and Sonia.

Hi Kathy, Hi Sonia - please respond to question regarding curriculum for trainers. Thank you.

#3 On Wed, Apr 17, 2019 at 10:21 AM Rebecca Gregory <rebecca.gregory@tempeschools.org> wrote:  
Yes, thank you.

Is there going to be a revised curriculum for trainers to use?

On Wed, Apr 17, 2019 at 10:05 AM Teresa Koehler <teresa.koehler@azdhs.gov> wrote:

Morning ... I believe the answer to your question is "yes" based on "...staff are certified in both pure tone and OAEs." However, please verify that staff certificates of completion specifically list successful completion of "Pure Tone Screening" and "OAE Screening." If both are listed on the certificate of completion, then a screener, as indicated in subsection (C), "shall renew...within 30 days prior to the expiration date of the certificate." Hope this helps. Teresa.

On Tue, Apr 16, 2019 at 11:32 AM Rebecca Gregory <rebecca.gregory@tempeschools.org> wrote:  
Thank you.

I am not sure I understand this.

All of my trained staff are certified in both pure tone and OAE's. Does Line C then apply to them, as opposed to lines A or B (where the word "or" is used?). If I am correct in this, when then are their certificates due for renewal? 30 days prior to the expiration date, or prior to June 30, 2020?

Thank you for clarifying.

**TITLE 9. HEALTH SERVICES**

**CHAPTER 13. DEPARTMENT OF HEALTH SERVICES**

**HEALTH PROGRAM SERVICES**

**ARTICLE 1. HEARING SCREENING**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**2019**

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

## TITLE 9. HEALTH SERVICES

### CHAPTER 13. DEPARTMENT OF HEALTH PROGRAM SERVICES

#### ARTICLE 1. HEARING SCREENING

**1. An identification of the rulemaking:**

Arizona Revised Statutes (A.R.S.) § 36-899.01 establishes a program of hearing evaluation services “which include identification testing, evaluation, and initiation of follow-up services as defined in rules and regulations of the department, as provided by section 36-899.03.” The Arizona Department of Health Services (Department) implemented the requirements of statutes, including A.R.S. § 36-899.02, by establishing a Sensory Program to provide hearing evaluation services for Arizona school children. A.R.S. § 36-899.03 requires the Department to develop rules “governing standards, procedures, techniques and criteria for conducting and administering hearing evaluation services.” In February 1986, the Department adopted rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 13, Article 1 for “Hearing Evaluation Services.” The rules were amended in October 1993 and last amended in July 2002, which included changing Article 1 title to “Hearing Screening.” The rules provide for systematic screening by Arizona’s schools of the student population, allowing for early identification of a hearing loss and appropriate intervention to eliminate or reduce the effects to a child’s learning and development. The Department revised the hearing screening rules consistent with the 2017 five-year-review report (Report) approved by the Governor's Regulatory Review Council on November 7, 2017. In R9-13-101 through R9-13-108, the Department changed the rules to: add new definitions; update outdated screening requirements, screener qualifications, terms and definitions; make hearing screening criteria and requirements consistent with current national standards and best practices; and simplify hearing screening population, notifications, records and reporting, and equipment standards. The Report indicated that the Department’s cooperative agreement with the University of Arizona (UoA) terminated on December 31, 2015. Through the Agreement, the UoA provided hearing screening training and certification to individuals interested in becoming a hearing screening trainer or master trainer. The UoA also provided renewal hearing screening courses to certified hearing screening trainers. With the UoA no longer providing hearing screening to trainers, the Department established six new Sections that include standards and regulations for trainer eligibility; instruction, examination, and observation; certificate of completion; continuing education, and renewal for individuals who wish to be a hearing screening trainer and trainers who wish to renew their certificate of completion.

**2. Identification of the persons, who will be directly affected by, bears the costs of, or directly benefits from the rules:**

- a. The Department
- b. Schools (Accommodation, charter, public, or private school as defined in A.R.S. § 15-101.)
- c. Early Childhood Education Programs
- d. Students and parents of students
- e. Individuals who wish to be a hearing screening screener and screeners
- f. Individuals who wish to be a hearing screening trainer and trainers
- g. Specialists (A licensed audiologist or a doctor of medicine licensed according to A.R.S. Title 32, Chapters 13 or 17, who specializes in the ear, nose and throat.)
- h. The public

**3. Cost/benefit analysis:**

This analysis covers cost and benefit associated with the rule changes. The annual cost and revenue changes are designated as minimal when \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or more in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefits	Decreased Cost/ Increased Benefits
<b>A. State and Local Government Agencies</b>			
The Department	Requires technical resources to amend and promulgate new rules	Moderate	Significant
	Requires administrative support to update website, database, forms, and other administrative documents	Minimal-to-moderate	Significant
	Requires personnel and resources to provide training to individuals who wish to be a hearing screening trainer	Moderate-to-substantial	Significant
	Removes obsolete requirements, updates antiquated language, and improves the effective of the rules	None	Significant
Schools (Public, Charter)	Changed and added terms and definitions, such as “administrator” and “school days”	None	Significant
	Clarifies hearing screening population and adds hearing screening for students who repeat a grade	None-to-minimal	Significant
	Adds requirements to verify	None	Significant

	<p>screener’s credentials and use of developmental and age appropriate audiological equipment</p> <p>Adds a requirement for screening a student who does not receive an initial hearing screening</p> <p>Provides notification and follow-up to the parents of students; not referrals</p> <p>Clarifies equipment standards</p> <p>Clarifies student records and hearing screening data including documentation provided by a specialist</p>	<p>None-to-minimal</p> <p>None</p> <p>None</p> <p>None</p>	<p>Significant</p> <p>Minimal</p> <p>Minimal</p> <p>Significant</p>
Early Childhood Education	<p>Clarifies hearing screening population</p> <p>Adds requirements to verify screener’s credentials and use of developmental and age appropriate audiological equipment</p> <p>Provides notification and follow-up to the parents of students; not referrals</p> <p>Clarifies equipment standards</p> <p>Clarifies student records and hearing screening data including documentation provided by a specialist</p>	<p>None-to-minimal</p> <p>None</p> <p>None-to-minimal</p> <p>None</p> <p>None</p>	<p>Significant</p> <p>Significant</p> <p>Minimal</p> <p>Minimal</p> <p>Minimal</p>
<b>B. Privately Owned Businesses</b>			
Private school	See “Schools” above	----	----
Early Childhood Education	See “Early Childhood Education” above		
Individuals who wish to be a hearing screening screener and screeners	<p>Clarifies screener qualifications:</p> <ul style="list-style-type: none"> <li>– Adds screener eligibility requirements</li> <li>– Updates classroom instructions</li> <li>– Adds requirement for individuals to demonstrate competency in the use of audiological equipment</li> <li>– Changes certificate expiration period from five years to four years</li> </ul>	None	Significant

	<ul style="list-style-type: none"> <li>– Clarifies renewal requirements related to classroom instruction, allows two continuing education units, and reduces overall time period required to complete renewal</li> </ul> <p>Provides rules that are consistent with current national standards and best practices</p> <p>Clarifies requirements to report immediately a student’s condition if unable to complete hearing screening due to physical or behavioral limits</p> <p>Removes obsolete requirements, updates antiquated language, and improves the effective of the rules</p>	None	Moderate
		None	Significant
		None	Significant
Individuals who wish to be a hearing screening trainer and trainers	<p>Adds requirements for:</p> <ul style="list-style-type: none"> <li>– Trainer eligibility, instruction, examination, observation, renewal, and certification requirements</li> <li>– No fees are charged for training, examination, and assessment for obtain certificate of completion</li> </ul> <p>Provides rules that are consistent with current national standards and best practices</p> <p>Removes obsolete requirements, updates antiquated language, and improves the effective of the rules</p>	None-to-minimal	Significant
		None	Significant
		None	Significant
Specialists	<p>Adds definition for “specialists”</p> <p>Clarifies requirements regarding notifications, follow-ups, and audiological evaluation received from a specialist</p> <p>Clarifies in record and reporting requirements for documentation received from a specialist</p>	None	Minimal
		None	Minimal-to-moderate
		None	None
<b>C. Consumers</b>			
Students and parents of students	Increases the quality of hearing screenings by clarifying and updating	None	Significant

	<p>criteria for hearing screenings, qualifications of screeners, equipment standards, and notification to parents</p> <p>Clarifies notification requirements sent to parents, including immediate notification of a student’s physical or behavioral limit preventing the student from receiving a hearing screening.</p>	None	Significant
The public	Increases the quality of hearing screenings and the number of students who are identified with hearing loss and provided early intervention services	None	Significant

**The Department**

9 A.A.C. 13, Article 1 pertains to hearing screening for students of all grades, including preschool and kindergarten, who are enrolled in public, private, charter, and accommodation schools. During the 2017-2018 school year, the Department's Sensory Program database identified 3,152 schools, including private schools. Of the schools identified, 1,856 complied with the reporting requirements in current R9-13-109, Records and Reporting Requirements. According to the data received from the reporting schools Arizona had approximately, 1.1 million students enrolled. Of these, 544,152 students were reported as having had a hearing screening during the school year and from those students that received hearing screenings, 600 students were newly identified as having hearing loss. As of April 15, 2019, there were 25 active trainers and approximately 4,500 active screeners listed in the Sensory Program database.

Drafting the new rules required Department’s resources to amend current rules in R9-13-101 through R9-13-108 to clarify the hearing screening populations, hearing screening requirements, notifications and follow-up, equipment, reporting, and screener qualifications. Department resources were also used to draft new rules in Sections R9-13-110 through R9-13-114; adding requirements for training individuals (trainers) who will train screeners. The Department expects to incur a moderate cost to draft and promulgate the new rules, but believes the benefit of having new rules over time will exceed any cost incurred. The Department also expects to incur moderate costs to have the database updated to include adding information about the type of audiological equipment used to conduct a hearing screening, as well as having administrative support update and maintain the hearing screening website, forms, and related resources and documents. The Department estimates it may receive a significant benefit for schools, screeners, and trainers being able to access updated hearing screenings information through Department’s electronic sources. The Department also believes it will spend less time

responding to calls and questions about the new rules after an initial period for educating affected persons about the new rules. The Department anticipates that its greatest cost will come from Department personnel and resources used to provide training to individuals who wish to become a hearing-screening trainer or who wish to renew an existing trainer certificate of completion. The Sensory Program receives no state funding each year; and only \$20,000 from federal grant is allocated to hearing screening – far less than what is required to provide training to individuals who wish to be a trainer and hearing-screening trainers wishing to renewal certificate of completion. Lastly, the Department believes it will receive a significant benefit for having rules that are more effective, no longer having obsolete requirements and antiquated language and definitions. The Department believes the new rules better ensure all enrolled students shall receive quality hearing screenings, and as needed, early intervention services.

### **Schools: Accommodation, Charter, Private, and Public**

The current rules require a school administrator to ensure that a school provides hearing screening for students enrolled in the school, as well as specify how, when, and by whom hearing screening is required to be performed. The new rules update and clarify many requirements in R9-13-101 through R9-13-108 for a “school administrator.” For example in new R9-13-101, the term “school administrator” was changed to “administrator” and the definition was changed to clarify “management of the school.” The term “school days” was also added since schools (administrators) are not open (administering) seven days a week. The new rules in R9-13-102, clarifies that hearing screenings do not pertain to child care facilities that provide preschool to enrolled children. The exemption is established in A.R.S. Title 36, Chapter 7.1 Child Care Programs and adding the exemption to rule is expected to eliminate confusion, save schools administrative time, and make the rules consistent with other state statutes. Additionally, in R9-13-102, the Department clarified the hearing screening population and added a requirement for students who repeat a grade to receive a hearing screening to ensure that students who repeat a grade do not have a hearing loss. The Department estimates adding a requirement to screen students who repeat a grade may cause a school to incur a minimal cost for providing additional screenings. However, schools should receive a significant benefit from identifying students, who were not previously identified as having hearing loss, and providing early intervention services; reasoning that students whose hearing need are met will be better student and less likely to act out or lag behind.

The Department in R9-13-103, hearing screening requirements, added a requirement for administrators to verify a screener’s certificate of completion before a screener provides hearing screenings to students; and a requirement for screeners to verify developmental and age appropriate audiological equipment prior to providing hearing screenings was also added. These requirements allow administrators to ensure that individual performing hearing screening at a school have proper credentials and that students who receive hearing screenings are evaluated with the correct audiological equipment. The Department does not expect schools to incur any costs related to these

changes and anticipates that schools will receive a significant benefit for having students screened by qualified screeners using the correct audiological equipment when determining whether a student may have hearing loss. In R9-13-104, the new rules include changing the word “days” to “school days;” adding a requirement for administrators to ensure that student who do not receive an initial hearing screening, when expected are rescheduled for an initial hearing screening and requirements for students that did not pass the initial hearing screening were changed to clarify when the second hearing screening should occur and what audiological equipment should be used. The Department anticipates that having to re-schedule students who did not receive an initial hearing screening could cause school to incur a cost; the cost is expected to be at most minimal since the number of students re-scheduled is limited to a small number. The Department believes the change from “days” to “school days” will provide schools with a significant benefit for having more time to provide hearing screenings. The Department estimates that “30 school days” is equivalent to “62 days” and even though students re-scheduled for an initial hearing screening is limited, identifying one student with hearing loss is still expected to provide a school and student a significant benefit.

The changes to rules in R9-13-105 clarify that school notifications are provided to parent and removes requirements for schools to provide parents a referral for a student who does not pass a hearing screening. The Department anticipates that these changes may provide a minimal benefit to a school. The new rules also provide flexibility to a school as to how a notification occurs by defining “notification” to mean a method used to inform or announce information on paper, electronic, photographic, or other permanent form. The Department believes many schools provide notification of hearing screenings to parent using all available resources. The Department anticipates that adding this requirement may cause schools to receive a significant benefit for not having to provide notifications to parent using a source that would otherwise cause schools to incur additional costs to provide. Equipment standards in R9-13-106 were changed to update references for calibration requirements, add OAE calibration specifications, and update screener equipment inspections requirements. In R9-13-107, the records and reporting rules were changed to add requirements for student records; clarify and add school information that is reported to the Department and when; and clarify that student records and school records are maintained according to Arizona State Library, Archives and Public Records, General Records Retention Schedule for All Arizona School Districts and Charter Schools Student Records. The Department estimates that these changes may provide a significant benefit to a school from having clearer reporting requirements, allowing electronic records to be used to document hearing screening, and having a copy of the report available for reference or for other school purposes. The Department also estimates schools will not incur cost for rule that clarifies state statutes that schools should already be compliant with related to maintaining public records. The Department believes removing obsolete requirements, adding new requirements, and updating antiquated language improves the effectiveness of the hearing screening rules and provides significant benefits to all schools that are providing hearing screenings to students.

### **Early Childhood Education Programs**

Infants and toddlers in Arizona’s early childhood education programs benefit from hearing screenings provided by agencies that comply with the criteria, standards, and requirements established in the hearing screening rules. Reliable early childhood education hearing screening enables more children to develop their cognitive, social, and emotional development by promoting early intervention for conditions of the ear and hearing loss. In R9-13-301, the Department removed “preschool” from the definition of “school” and changed the “preschool” definition to better clarify the preschool hearing screening population. The Department expects this change will better ensure that students who attend a freestanding preschools or preschools located in public schools will receive hearing screenings. The Department anticipates that this change will provide a significant benefit to students who attend freestanding and district preschools and their parents. Additionally, the Department anticipates that the changes made in new R9-13-108, updating screener qualifications, specifically the training criteria for hearing screenings provided to preschool students, may provide a significant benefit to preschool students and parents. Also, the Department anticipates that some changes made in R9-13-105 through R9-13-107 related to updating and clarifying equipment standards, notification to parents, and student records and data may provide a minimal benefit too. The Department believes by improving the potential for providing early identification of hearing loss and intervention if greater than any minimal cost that might occur.

### **Individuals who wish to be a hearing screening screener and screeners**

The current rules in R9-13-107 specify requirements for individuals who wish to be a hearing screening screener (individuals) and screeners who wish to renew certificate of completion (screeners). Additional requirements for screeners are established: in R9-12-103 related to preparing to provide and providing a hearing screening, including criteria for determining the audiological equipment to use; in R9-13-104 related to criteria for determining whether a student has passed a hearing screening, and in R9-13-108 related to calibration standards for audiological equipment used by screeners and screener’s inspection of audiological equipment prior to use.

In the amended rules, the Department moved screener qualifications to new R9-13-108. To amended screener qualification rules, the Department added requirements specifying individuals who may become a screener; simplified classroom instruction and reduce overall time period to complete screener training; and added a requirement for individuals to demonstrate competency using audiological equipment. The new rules also changed the renewal time period from five years to four years, simplified renewal requirements, and added continuing education (CEs) units to allow screeners to complete two hours of training on-line rather than in a classroom. In new R9-13-103, Hearing Screening Requirements, the Department updated the criteria for audiological equipment used during hearing screenings to make consistent with national standards and best practices; clarified conditions a screener is required to observe and verify prior to performing a hearing screening;

and added requirements for a screener to determine whether a student is physically or behaviorally limited in the ability to respond to perceived sounds, and if verified, immediately report to an administrator what the screener observed that prevented the screener from performing a hearing screening on a student. In new R9-13-106, Equipment Standards and previously R9-13-108, the rules were changed to update national standard references for calibrating audiometers and tympanometers and added specifications related to calibration for otoacoustic emissions devices. The new rules also updated requirements for screeners inspecting audiological equipment prior to use.

The Department believes individuals and screeners will not incur additional costs due to the rules. The Department expects that if additional costs do occur for individuals and screeners, the additional cost will be related to trainers increasing fees for providing hearing screening trainings. The Department expects individuals and screeners will receive a significant benefit for having rules that simplify the renewal process and allows for CE. The Department anticipates that allowing CE will save screeners time and money, since most hearing screening CE is provided through professional hearing screening associations on-line and at no cost. The Department anticipates that having rules that are current with national standards and best practices and contain updated national standard references for audiological equipment provide additional benefits to screeners who focus on providing quality hearing screenings to students, especially, when a student with a hearing loss is identified and is provided early intervention services. The new rules may also provide a significant benefit to individuals and screeners for having rules that no longer contain obsolete requirements and antiquated language. The new rules are effective, clearer, concise and understandable.

#### **Individuals who wish to be a hearing screening trainers and trainers**

As stated previously, with the UoA no longer providing hearing screening trainer to individuals who wish to be a trainer (individuals) and trainers who wish to renew trainer certificate of completion (trainers), the Department added six new Sections for hearing screening trainers. The new rules include trainer eligibility; request for certificate, trainer instruction, examination, and observation; renewal of certificate and continuing education; and requesting a change in trainer personal information. The new requirements in R9-13-109 identify trainer eligibility and responsibilities related to the practice of a trainer and clarify instruction requirements for training individuals seeking an initial screener certificate of completion or renewal. This Section also includes requirements for creating and updating a screener's training record. New R9-13-110 establishes requirements for when and how individuals may submit a request for obtaining a trainer certificate of completion, and in R9-13-111, the rule provides requirements for completing classroom instruction, examination, and observation for initial trainer certificate of completion. Requirements for renewing a trainer's certificate of completion and related trainer continuing education are established in new R9-13-112 and R9-13-113. Lastly, the rule in R9-13-114 requires trainers to update their personal information and clarifies that a trainer shall provide to the Department a

written notice stating the information to be changed. The Department expects that the new rules regarding initial and renewal requirements for obtaining a trainer certificate of completion may cause individuals to incur a minimal cost for time spent completing the trainings. However, since the new rules do not require individuals to pay for training (classroom instruction, examination, and assessment), as did the UoA Train-the-Trainer T-3 Program, the Department believes individuals completing training and obtaining certificate of completion will receive a significant benefit. Additionally, once a trainer, a trainer will receive an even greater benefit for monies collected for providing training to individuals who wish to be a screener. The Department believes the same is true for trainers, who assist and provide training to screeners renewing a screener certificate of completion. The Department also anticipates that individuals and trainers will receive a significant benefit for having rules that are consistent with current national standards and best practices and are effective, clear, and understandable.

### **Specialist**

In the current rules, a distinction is made between physicians and primary care practitioners. However since the two terms are only used together and primary care practitioner is not applicable, the Department deleted terms “physician” and “primary care practitioner”; and in new R9-13-101, added a definition for “specialist” that includes licensed audiologists and doctors of medicine who specialize in ear, nose, and throat. Other licensed professionals who may request a hearing screening for a student are listed in new R9-13-102 and includes licensing statutes. The new rules also more clearly specify that an audiologist may be a screener. The Department anticipates that audiologists and doctors of medicine may see a minimal increase in revenue since new rules no longer require referrals to other professional to provide student audiological evaluations.

In the current R9-13-105, a school administrator is required to provide parents a referral for their student to receive a hearing evaluation when a student did not receive an initial hearing screening, due to physical limitations, or did not pass a second hearing screening; R9-13-105 also specifies what information about a student’s hearing evaluation should be provided to the school, including student’s physical assessment and diagnosis and recommendations for treatment. The Department received several comments that many physicians and primary care practitioners are not providing adequate hearing evaluations for students who require follow-up. For this reason, the Department added a definition for “specialist” in R9-13-101 and a new rule in R9-13-105 that specifies what audiological evaluation information, provided by a specialist, in response to a notification a parent received from an administrator. The Department expects parents who respond to an administrator’s request to have a student receive an audiological evaluation may provide a minimal-to-moderate increase in revenue for specialists, depending on how many parents actually scheduled appointments for their students. However, the increase may be less if the information required is not usually provided or included in the audiological evaluation provided by the specialist. A new requirement, in R9-13-107(B), for student’s records, asks administrator to include copies of written diagnosis received from a specialist. The Department does not anticipate this new rule to

be burdensome for specialists. The Department estimates that overall specialists will receive a minimal-to-moderate benefit from the new rules.

### **Students and Parents of Students**

Arizona's students benefit from hearing screenings provided by schools that comply with the criteria, standards, and requirements established in the hearing screening rules. Reliable school hearing screening enables more students to develop their academic, social, and communication skills by promoting early intervention for conditions of the ear and hearing loss. The new rules that clarify and update criteria for hearing screenings, qualifications of screeners, equipment standards, and notification to parents may provide a significant benefit to a student and student's parent by improving the potential for early identification of hearing loss and intervention. The new requirements in R9-13-105 specify that an administrator is required to: notify parents of students when a hearing screening is scheduled in a school and inform parents that they have a right to refuse or request a hearing screening for their student. The new rules also clarify that parents' are notified of hearing screening results, rather than receiving a referral; and if a student does not receive a hearing screening due to an existing physical or behavioral limit in the student's ability to adequately respond to hearing screening, the student's parents are to be informed immediately to ensure the student does not suffer from prolonged deterioration related to the physical or behavioral limit identified by the screener. The Department anticipates that this change will provide a significant benefit to students and parents of students. Lastly, the Department believes that the benefits of the new rules for students who are identified with hearing loss and provided early intervention services are also very significant.

### **The Public**

The clarity of the new rules with respect to hearing screenings requirements based on best practices, qualified screeners and trainers, equipment standards consistent with national standards, and follow-ups with parents is expected to provide a significant benefit to the general public. The Department expects that quality hearing screenings will most likely increase the number of students who are identified with a hearing loss and who may receive early intervention services. The Department also anticipates that better trained screeners may reduce the number of false positive referrals of students. The Department believes that Arizonans in general will benefit from students who receive early intervention services to become successful and contributing members of the community as adults.

The Department has determined that the benefits related to hearing screenings for students identified in the new rules outweighs any potential costs associated with this rulemaking.

#### **4. A general description of the probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the rulemaking.**

The Department does not expect public or private employment in the state to be affected this rulemaking.

5. **A statement of the probable impact of the rules on small businesses:**
  - a. **An identification of the small business subject to the rulemaking:**

Small businesses affected by the rulemaking may include charter schools, private schools, and office of audiologists and doctors of medicine defined in Article 1.
  - b. **The administrative and other costs required for compliance with the rules:**

A summary of the administrative effects of the rulemaking is given in the cost and benefit analysis in Paragraph 3.
  - c. **A description of the methods that the agency may use to reduce the impact on small businesses:**

The Department knows of no other methods to further reduce the impact on small businesses.
  - d. **The probable costs and benefits to private persons and consumers who are directly affected by the rulemaking:**

A summary of the effects of the rulemaking to private persons and consumers is given in the cost and benefit analysis Paragraph 3.
6. **A statement of the probable effect on state revenues:**

The Department does not expect the rules to have an effect on state revenues.
7. **A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:**

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.
8. **A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:**

Not applicable.

**ARTICLE 1. HEARING SCREENING****R9-13-101. Definitions**

In this Article, unless the context otherwise requires:

1. "Assistive listening device" has the meaning in A.R.S. § 36-1901.
2. "Audiologist" means an individual licensed under A.R.S. Title 36, Chapter 17.
3. "Audiometer" means an electronic device that generates signals used to measure hearing.
4. "Calibration" means a determination of the accuracy of an instrument by measurement of a variation from a standard.
5. "Cochlear implant" means a surgically inserted device that electrically stimulates the hearing nerve in the inner ear.
6. "dB" means decibel.
7. "dB HL" means decibel hearing level.
8. "Deaf" has the meaning in A.R.S. § 36-1941.
9. "Department" means the Arizona Department of Health Services.
10. "Documentation" means signed and dated information in written, photographic, electronic, or other permanent form.
11. "Effusion" means the escape of fluid from a blood or lymphatic vessel into tissue or a cavity.
12. "Frequency" means the number of cycles per second of a sound wave.
13. "Hard of hearing" has the meaning in A.R.S. § 36-1941.
14. "Hearing aid" has the meaning in A.R.S. § 36-1901.
15. "Hearing screening" means a test of a student's ability to hear certain frequencies at a consistent loudness performed in a school by an individual who meets the requirements in R9-13-107.
16. "Hz" means Hertz, a unit of frequency equal to one cycle per second.
17. "Immittance" means the ease of transmission of sound through the middle ear.
18. "Inner ear" means the semicircular canals, auditory nerve, and cochlea.
19. "Intensity" means the strength of a sound wave striking the eardrum resulting in the perception of loudness as expressed in decibels or decibels hearing level.
20. "Kindergarten" means the grade level immediately preceding first grade.
21. "Middle ear" means the eardrum, malleus, incus, stapes, and eustachian tube.
22. "mm H<sub>2</sub>O" means millimeters of water.
23. "Noise floor" means sounds present in the auditory canal from either the environment or bodily functions such as breathing and blood flow.
24. "Otitis media" means inflammation of the middle ear.
25. "Otoacoustic emissions" means the sounds generated from the inner ear.
26. "Outer ear" means the pinna, lobe, and auditory canal.
27. "Parent" has the meaning in A.R.S. § 15-101.
28. "Physician" means an individual licensed under A.R.S. Title 32, Chapter 13 or 17.
29. "Preschool" means the instruction preceding kindergarten provided to individuals three to five years old through a:
  - a. School as defined in A.R.S. § 15-101,
  - b. Accommodation school as defined in A.R.S. § 15-101,
  - c. Charter school as defined in A.R.S. § 15-101, or
  - d. Private school as defined in A.R.S. § 15-101.
30. "Primary care practitioner" means an individual licensed as a registered nurse practitioner under A.R.S. Title 32, Chapter 15 or a physician assistant under A.R.S. 32, Chapter 25.
31. "Pure tone" means a single frequency sound.
32. "Reproducibility" means the correlation of two responses measured simultaneously and reported by percentage.
33. "School" means:
  - a. School as defined in A.R.S. § 15-101;
  - b. Preschool,
  - c. Kindergarten,
  - d. Accommodation school as defined in A.R.S. § 15-101,
  - e. Charter school as defined in A.R.S. § 15-101, or
  - f. Private school as defined in A.R.S. § 15-101
34. "School administrator" means an individual or the individual's designee assigned to act on behalf of a school by the body organized for the government and the management of the school.
35. "School year" means the period between July 1 and the following June 30.
36. " Screener" means an individual qualified to perform a hearing screening in a school according to R9-13-107.
37. "Special education" has the meaning in A.R.S. § 15-761.
38. "Speech-language pathologist" means an individual licensed under A.R.S. Title 36, Chapter 17.
39. "Student" means an individual enrolled in a school.
40. "Supervision" has the meaning in A.R.S. § 36-401.
41. "Tympanogram" means a chart of the indirect measurements of the ease of movement of the parts of the middle ear as air pressure in the auditory canal changes.
42. "Tympanometer" means a device that indirectly measures the ease of movement of the parts of the middle ear as air pressure in the auditory canal changes.
43. "Tympanometry" means the indirect measurement of the ease of movement of the parts of the middle ear as air pressure in the auditory canal changes.

**Historical Note**

Adopted effective February 18, 1986 (Supp. 86-1).  
 Amended effective October 15, 1993 (Supp. 93-4).  
 Amended by final rulemaking at 8 A.A.R. 3307, effective July 16, 2002 (Supp. 02-3).

**R9-13-102. Hearing Screening Population**

- A.** A school administrator shall ensure that the following students have a hearing screening each school year:
  1. A student enrolled in preschool, kindergarten, or grade 1, 2, 6, or 9;
  2. A student enrolled in grade 3, 4, or 5, unless there is written documentation that the student had a hearing screening in or after grade 2;
  3. A student enrolled in grade 7 or 8, unless there is written documentation that the student had a hearing screening in or after grade 6;
  4. A student enrolled in grade 10, 11, or 12 unless there is written documentation that the student had a hearing screening in or after grade 9;
  5. A student receiving special education; and
  6. A student who failed a second hearing screening in the prior school year.
- B.** A school administrator shall ensure that a student has a hearing screening at the request of the student, the student's parent, a schoolteacher, a school nurse, a school psychologist, an audiologist, a physician, a primary care practitioner, a speech language pathologist, or Department staff.
- C.** A hearing screening is not required if a:
  1. Student is age 16 years or over;

2. Student's parent objects in writing to the screening as allowed under A.R.S. § 36-899.04;
  3. Written diagnosis or evaluation from an audiologist states that a student is deaf or hard of hearing; or
  4. Student has a hearing aid, an assistive listening device, or a cochlear implant.
- D.** In addition to meeting the requirements in subsections (A) and (B), a school administrator shall ensure that a student who meets the criteria specified in State Board of Education rule R7-2-401 has a hearing screening required under R7-2-401.

**Historical Note**

Former Section R9-13-112 renumbered and amended as Section R9-13-102 effective February 18, 1986 (Supp. 86-1). Amended effective October 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 3307, effective July 16, 2002 (Supp. 02-3).

**R9-13-103. Hearing Screening Requirements**

- A.** Before performing a hearing screening, a screener shall visually inspect a student's outer ears for:
1. Fluid or drainage,
  2. Blood,
  3. An open sore, or
  4. A foreign object.
- B.** If a screener inspects a student's outer ears and finds any of the conditions in subsection (A), the screener shall not perform a hearing screening.
- C.** A screener shall perform a hearing screening in each ear using one of the following hearing screening methods:
1. Four-frequency, pure tone hearing screening that screens at each of the following frequencies and intensities:
    - a. 500 Hz at 25 dB HL,
    - b. 1000 Hz at 20 dB HL,
    - c. 2000 Hz at 20 dB HL, and
    - d. 4000 Hz at 20 dB HL;
  2. Three-frequency, pure tone hearing screening with tympanometry that:
    - a. Includes a tympanogram that is generated automatically or is plotted at a minimum of the following three points:
      - i. +100 mm H<sub>2</sub>O,
      - ii. Point of maximum immittance, and
      - iii. -200 mm H<sub>2</sub>O; and
    - b. Screens at each of the following frequencies at 20 dB HL:
      - i. 1000 Hz,
      - ii. 2000 Hz, and
      - iii. 4000 Hz; or
  3. Otoacoustic emissions hearing screening using otoacoustic emissions equipment that generates a pass or no pass result:
    - a. Using a minimum of three frequencies,
    - b. At no less than 3 dB above the noise floor, and
    - c. With reproducibility greater than 50%.

**Historical Note**

Adopted effective February 18, 1986 (Supp. 86-1). Amended effective October 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 3307, effective July 16, 2002 (Supp. 02-3).

**R9-13-104. Criteria for Passing a Hearing Screening; Requirements for Performing a Second Hearing Screening**

- A.** A student passes a hearing screening if:
1. During a four-frequency, pure tone hearing screening, the student responds in each ear to each frequency at each intensity listed in R9-13-103(C)(1)(a) through (C)(1)(d);

2. During a three-frequency, pure tone hearing screening with tympanometry, the student:
    - a. Responds in each ear to each frequency as described in R9-13-103(C)(2)(b); and
    - b. Reaches a point of maximum immittance in each ear within the range of +100mm H<sub>2</sub>O to -200mm H<sub>2</sub>O; or
  3. During an otoacoustic emissions hearing screening, the student receives a pass result in each ear according to R9-13-103(C)(3).
- B.** If a student does not pass a hearing screening according to subsection (A), a screener shall perform a second hearing screening on the student no earlier than 30 days and no later than 45 days from the date of the first hearing screening. The screener shall perform the second hearing screening using the same method as the first hearing screening.

**Historical Note**

Adopted effective February 18, 1986 (Supp. 86-1). Amended effective October 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 3307, effective July 16, 2002 (Supp. 02-3).

**R9-13-105. Referral; Notification; Follow-up**

- A.** If a school administrator finds that a student does not require a hearing screening under R9-13-102(C)(3) or (C)(4), the school administrator shall provide to the student's parent, within 10 days from the date the finding is made, a referral to have the student's current hearing status evaluated by an audiologist, including an electroacoustic analysis of any hearing aid or assistive listening device, unless there is documentation from an audiologist specifying a different evaluation schedule.
- B.** If a screener finds any of the conditions listed in R9-13-103(A) and a student does not have a hearing screening:
1. A school administrator shall provide to the student's parent, within 10 days from the date the condition is found, a referral to have the student's outer ears evaluated by a physician or primary care practitioner; and
  2. A screener shall perform the hearing screening on the student no earlier than 30 days and no later than 45 days from the date the screener finds the condition.
- C.** If a student does not pass a second hearing screening or does not complete a second hearing screening within the time period required under R9-13-104(B), a school administrator shall provide to the student's parent, within 10 days from the date of the second hearing screening or from the date the period for completing a second hearing screening ends, a referral to have the student's current hearing status evaluated by one of the following:
1. An audiologist, a physician, or a primary care practitioner if the screener used only the four-frequency, pure tone hearing screening method;
  2. A physician or primary care practitioner if the student did not pass the tympanometry portion, but passed the three-frequency, pure tone portion of the hearing screening;
  3. An audiologist if the student did not pass the three-frequency, pure tone portion, but passed the tympanometry portion of the hearing screening; or
  4. An audiologist, a physician, or a primary care practitioner if the screener used the otoacoustic emissions hearing screening method.
- D.** A referral identified in subsection (C) is not required if a school-provided audiologist:
1. Assesses a student's hearing status and the condition of the middle ear at the conclusion of a hearing screening; and

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2. Within 10 days from date of the assessment, provides the student's parent with a written diagnosis and recommendation for treatment, if applicable.
- E. A referral required under subsections (A), (B), or (C), shall include a form requesting the following:
  1. The name, address, and telephone number of the student evaluated;
  2. The date of evaluation;
  3. An assessment of the condition of the outer ear, if applicable;
  4. An assessment of hearing status and the condition of the middle ear, if applicable;
  5. A diagnosis and recommendation for treatment, if applicable;
  6. The signature and title of the individual evaluating the student and completing the form; and
  7. A request that the individual completing the form or the student's parent return the completed form to the school.
- F. Under State Board of Education rule R7-2-401, a school administrator shall ensure that a student referred under subsections (A) or (C) is evaluated.
- G. If a school receives notice of a diagnosis that a student is deaf or hard of hearing from an audiologist, the school administrator shall notify, within 10 days from the date the notice of diagnosis is received, each of the student's teachers and the person responsible for the school's special education services of the diagnosis.

**Historical Note**

Adopted effective February 18, 1986 (Supp. 86-1).

Amended effective October 15, 1993 (Supp. 93-4).

Amended by final rulemaking at 8 A.A.R. 3307, effective July 16, 2002 (Supp. 02-3).

**R9-13-106. Repealed****Historical Note**

Adopted effective February 18, 1986 (Supp. 86-1).

Amended effective October 15, 1993 (Supp. 93-4).

Section repealed by final rulemaking at 8 A.A.R. 3307, effective July 16, 2002 (Supp. 02-3).

**R9-13-107. Screener Qualifications**

- A. An audiologist may perform a hearing screening.
- B. An individual who is not an audiologist may perform a hearing screening only if the individual passes a hearing screener course that:
  1. Includes 90 minutes of classroom instruction in the introduction to hearing covering:
    - a. Development of speech and language;
    - b. Anatomy and physiology of the ear;
    - c. Signs and prevention of hearing loss in children; and
    - d. A.R.S. Title 36, Chapter 7.2 and 9 A.A.C. 13, Article 1;
  2. Includes 120 minutes of classroom instruction in hearing screening covering:
    - a. Auditory development,
    - b. Early identification of hearing loss,
    - c. Principles of hearing screening,
    - d. Selection of hearing screening methods, and
    - e. Components of setting-up a hearing screening program;
  3. Includes 75 minutes of classroom instruction in referral and reporting covering:
    - a. Results of a hearing screening,
    - b. Responses to a hearing screening outcome,
    - c. Procedures for recording and tracking,
    - d. Communication with parents,
    - e. Role of community resources, and
    - f. Reporting hearing screening results;
4. For an individual who will perform a hearing screening using three-frequency or four-frequency, pure tone hearing screening, includes 120 minutes of classroom instruction covering:
  - a. Selecting and setting-up a hearing screening site,
  - b. Performing a pure tone hearing screening, and
  - c. Identifying children who need referral and evaluation;
5. For an individual who will perform a hearing screening using tympanometry with three-frequency, pure tone hearing screening, includes 60 minutes of classroom instruction covering:
  - a. The anatomy and functions of the middle ear,
  - b. What tympanometry measures and identifies,
  - c. Using a tympanometer,
  - d. Performing a tympanometry hearing screening, and
  - e. Identifying children who need referral and evaluation;
6. For an individual who will perform a hearing screening using otoacoustic emissions hearing screening, includes 60 minutes of classroom instruction covering:
  - a. What otoacoustic emissions identify and measure,
  - b. Using otoacoustic emissions equipment,
  - c. Performing an otoacoustic emissions hearing screening, and
  - d. Identifying children who need referral and evaluation;
7. Requires an individual to pass the course by scoring 80% or more on an examination that tests what the individual has learned;
8. Is taught by an individual who:
  - a. Is an audiologist, or
  - b. Meets the screener qualifications in subsection (B) or (C) and has performed at least 50 hearing screenings within 24 months before teaching a hearing screener course; and
9. Provides an individual who passes the course with a certificate of completion that includes:
  - a. The individual's name;
  - b. Whether the following were completed:
    - i. Introduction to hearing,
    - ii. Hearing screening,
    - iii. Referral and reporting,
    - iv. Pure tone hearing screening,
    - v. Tympanometry hearing screening, and
    - vi. Otoacoustic emissions hearing screening;
  - c. An attestation that the course meets the requirements in subsection (B) or (C); and
  - d. The name and signature of the individual who taught the course.
- C. Every five years after completing a hearing screener course described in subsection (B), a screener who is not an audiologist shall pass a hearing screener course that:
  1. Includes 195 minutes of classroom instruction covering the material required under subsections (B)(1), (B)(2), and (B)(3);
  2. For an individual who will perform a hearing screening using three-frequency or four-frequency, pure tone hearing screening, includes 60 minutes of classroom instruction covering the material required under subsection (B)(4);
  3. For an individual who will perform a hearing screening using tympanometry with three-frequency, pure tone hearing screening, includes 30 minutes of classroom

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- instruction covering the material required under subsection (B)(5);
4. For an individual who will perform a hearing screening using otoacoustic emissions hearing screening, includes 30 minutes of classroom instruction covering the material required under subsection (B)(6); and
  5. Meets the requirements in subsections (B)(7), (B)(8), and (B)(9).
- D.** Before performing a hearing screening, an individual who passes a hearing screener course described in subsection (B) or (C) shall give a copy of the certificate of completion described in subsection (B)(9) to the school.
- E.** An individual who does not meet the screener qualifications in subsection (A), (B), or (C) may perform a four-frequency, pure tone hearing screening, other than a second hearing screening required under R9-25-104(B), only under the supervision of an individual who meets the screener qualifications in subsection (A), (B), or (C).

**Historical Note**

Former Section R9-13-113 renumbered and amended as Section R9-13-107 effective February 18, 1986 (Supp. 86-1). Amended effective October 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 3307, effective July 16, 2002 (Supp. 02-3).

**R9-13-108. Equipment Standards**

- A.** A school administrator shall ensure that a pure tone audiometer used to perform a three-frequency or four-frequency, pure tone hearing screening is:
1. Calibrated every 12 months according to the American National Standard Specification for Audiometers, S3.6-1996, Standards Secretariat, c/o Acoustical Society of America, 120 Wall Street, 32nd Floor, New York, New York 10005-3993, January 12, 1996, incorporated by reference in R9-16-209(B)(1); and
  2. Inspected within 24 hours before use to ensure that:
    - a. The calibration complies with subsection (A)(1),
    - b. The power source and power indicator are working,
    - c. The earphone cords are securely connected and have no breaks,
    - d. Each frequency and intensity required under R9-13-103(C)(1) is present,
    - e. A signal does not cross from one earphone to the other, and
    - f. Each earphone is free of noise or distortion that could interfere with a hearing screening.
- B.** A school administrator shall ensure that a tympanometer used to perform the tympanometry portion of a hearing screening:
1. Is calibrated every 12 months according to the American National Standard Specifications for Instruments to Measure Aural Acoustic Impedance and Admittance, S3.39-1987, Standards Secretariat, Acoustical Society of America, 335 East 45th Street, New York, New York 10017-3483, October 5, 1987, not including any later amendments or editions, incorporated by reference and on file with the Department and the Office of the Secretary of State; and
  2. Is inspected within 24 hours before use to ensure that the calibration complies with subsection (B)(1).
- C.** A school administrator shall ensure that otoacoustic emissions equipment used to perform an otoacoustic emissions hearing screening is:
1. Calibrated every 12 months according to manufacturer's specifications; and
  2. Inspected within 24 hours before use to ensure that:

- a. The calibration complies with manufacturer's specifications,
- b. No obstruction is in the probe microphone, and
- c. The test signal is present.

**Historical Note**

Adopted effective February 18, 1986 (Supp. 86-1).  
Amended effective October 15, 1993 (Supp. 93-4).  
Amended by final rulemaking at 8 A.A.R. 3307, effective July 16, 2002 (Supp. 02-3).

**R9-13-109. Recordkeeping, Reporting Requirements**

- A.** A school administrator shall retain, for Department review and inspection, a written record of:
1. The date and results of a student's hearing screening for no less than three complete school years beginning on the first July 1 after the student's last date of attendance at the school, and
  2. All calibration dates for a piece of hearing screening equipment currently used in the school.
- B.** By June 30th of each year, a school administrator shall submit to the Department the following information for the school year ending that June 30th:
1. On a form available from the Department, the number of students by grade in each of the following categories:
    - a. Were enrolled at the time of a first hearing screening,
    - b. Did not have a first hearing screening under R9-13-102(C),
    - c. Had a first hearing screening,
    - d. Did not pass a first hearing screening,
    - e. Had a second hearing screening,
    - f. Did not pass a second hearing screening,
    - g. Were evaluated by an audiologist,
    - h. Were evaluated by a physician or a primary care practitioner,
    - i. Were first diagnosed as deaf or hard of hearing during the current school year, and
    - j. Were diagnosed as deaf or hard of hearing during a prior school year; and
  2. The name of each individual who performed a hearing screening in the school and:
    - a. The individual's license number to practice audiology, or
    - b. Evidence that the individual successfully completed a hearing screening course described in R9-13-107(B) or (C).

**Historical Note**

Former Section R9-13-116 renumbered and amended as Section R9-13-109 effective February 18, 1986 (Supp. 86-1). Amended effective October 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 3307, effective July 16, 2002 (Supp. 02-3).

**R9-13-110. Repealed****Historical Note**

Former Section R9-13-117 renumbered and amended as Section R9-13-110 effective February 18, 1986 (Supp. 86-1). Repealed effective October 15, 1993 (Supp. 93-4).

**R9-13-111. Repealed****Historical Note**

Effective 4-72. Amended effective November 18, 1976 (Supp. 76-5). Repealed effective February 18, 1986 (Supp. 86-1).

**R9-13-112. Renumbered**

**Historical Note**

Effective 4-72. Amended effective November 18, 1976 (Supp. 76-5). Section R9-13-112 renumbered and amended as Section R9-13-102 effective February 18, 1986 (Supp. 86-1).

**R9-13-113. Renumbered****Historical Note**

Effective 4-72. Amended effective November 18, 1976 (Supp. 76-5). Section R9-13-113 renumbered and amended as Section R9-13-107 effective February 18, 1986 (Supp. 86-1).

**R9-13-114. Repealed****Historical Note**

Effective 4-72. Amended effective November 18, 1976 (Supp. 76-5). Repealed effective February 18, 1986 (Supp. 86-1).

**R9-13-115. Repealed****Historical Note**

Effective 4-72. Amended effective November 18, 1976 (Supp. 76-5). Repealed effective February 18, 1986 (Supp. 86-1).

**R9-13-116. Renumbered****Historical Note**

Effective 4-72. Correction, Section R9-13-116 omitted in Supp. 76-5 (Supp. 77-5). Section R9-13-116 renumbered and amended as Section R9-13-109 effective February 18, 1986 (Supp. 86-1).

**R9-13-117. Renumbered****Historical Note**

Effective 4-72. Correction, Section R9-13-117 omitted in Supp. 76-5 (Supp. 77-5). Section R9-13-117 renumbered and amended as Section R9-13-110 effective February 18, 1986 (Supp. 86-1).

**ARTICLE 2. NEWBORN AND INFANT SCREENING****R9-13-201. Definitions**

In this Article, unless otherwise specified:

1. "Abnormal result" means an outcome that deviates from the range of values established by:
  - a. The Department for an analysis performed as part of a bloodspot test or for a hearing test, or
  - b. A health care facility or health care provider for critical congenital heart defect screening.
2. "Admission" or "admitted" means the same as in A.A.C. R9-10-101.
3. "AHCCCS" means the Arizona Health Care Cost Containment System.
4. "Argininosuccinic acidemia" means a congenital disorder characterized by an inability to metabolize the amino acid argininosuccinic acid due to defective argininosuccinate lyase activity.
5. "Arizona State Laboratory" means the entity operated according to A.R.S. § 36-251.
6. "Audiological equipment" means an instrument used to help determine the presence, type, or degree of hearing loss by:
  - a. Providing ear-specific and frequency-specific stimuli to an individual; or
  - b. Measuring an individual's physiological response to stimuli.
7. "Audiologist" means the same as in A.R.S. § 36-1901.
8. "Beta-ketothiolase deficiency" means a congenital disorder characterized by an inability to metabolize 2-methylacetoacetyl-CoA due to defective mitochondrial acetoacetyl-CoA thiolase activity.
9. "Biotinidase deficiency" means a congenital disorder characterized by defective biotinidase activity that causes abnormal biotin metabolism.
10. "Birth center" means a health care facility that is not a hospital and is organized for the purpose of delivering newborns.
11. "Blood sample" means capillary or venous blood, but not cord blood, applied to the filter paper of a specimen collection kit.
12. "Bloodspot test" means multiple laboratory analyses performed on a blood sample to screen for the presence of congenital disorders listed in R9-13-203.
13. "Carnitine uptake defect" means a congenital disorder characterized by a decrease in the amount of free carnitine due to defective sodium ion-dependent carnitine transporter OCTN2 activity.
14. "Citrullinemia" means a congenital disorder characterized by an inability to convert the amino acid citrulline and aspartic acid into argininosuccinic acid due to defective argininosuccinate synthetase activity.
15. "Classic galactosemia" means a congenital disorder characterized by abnormal galactose metabolism due to defective galactose-1-phosphate uridylyltransferase activity.
16. "Congenital adrenal hyperplasia" means a congenital disorder characterized by decreased cortisol production and increased androgen production due to defective 21-hydroxylase activity.
17. "Congenital disorder" means an abnormal condition present at birth, as a result of heredity or environmental factors, that impairs normal physiological functioning of a human body.
18. "Congenital hypothyroidism" means a congenital disorder characterized by deficient thyroid hormone production.
19. "Critical congenital heart defect" means a heart abnormality or condition present at birth that places a newborn or infant at significant risk of disability or death if not diagnosed soon after birth.
20. "Cystic fibrosis" means a congenital disorder caused by defective functioning of a transmembrane regulator protein and characterized by damage to and dysfunction of various organs, such as the lungs, pancreas, and reproductive organs.
21. "Department" means the Arizona Department of Health Services.
22. "Diagnostic evaluation" means a hearing test performed by an audiologist or a physician to determine whether hearing loss exists, and, if applicable, determine the type or degree of hearing loss.
23. "Discharge" means the termination of inpatient services to a newborn or an infant.
24. "Disorder" means a disease or medical condition that may be identified by a laboratory analysis.
25. "Document" means to establish and maintain information in written, photographic, electronic, or other permanent form.
26. "Educational materials" means printed or electronic information provided by the Department, explaining newborn and infant screening, any of the congenital disorders listed in R9-13-203, hearing loss, or critical congenital heart defect.

## ATTACHMENT B (General and Specific Statutory Authorities)

### 9 A.A.C. 13, Article 1, Hearing Screening

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

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

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school children, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.

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

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

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

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

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

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

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.

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3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state.

When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

D. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in

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

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

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

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

H. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
3. Define and prescribe reasonably necessary procedures not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to assure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat

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processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event that takes place at a workplace, such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous and that is displayed in an area of less than ten linear feet.
- (g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for developmentally disabled individuals, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

5. Prescribe reasonably necessary measures to assure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

## 9 A.A.C. 13, Article 1, Hearing Screening

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to assure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to assure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.

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

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or

## 9 A.A.C. 13, Article 1, Hearing Screening

semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

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

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

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

I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

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

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

L. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the

## 9 A.A.C. 13, Article 1, Hearing Screening

district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (b) of this section, a kitchen in a private home that is used as a cooking school and that prepares and offers food to students is exempt from the rules prescribed in subsection H of this section if all of the following are true:

1. Only one cooking school meal per day is prepared and served.
2. The meal is served to not more than fifteen cooking school students.
3. The students are informed by a statement contained in a published advertisement, mailed brochure and placard posted at the cooking school's registration that the food is prepared in a kitchen that is not regulated and inspected by the department or by a local health authority.

### 36-899. Definitions

In this chapter, unless the context otherwise requires:

1. "Department" means the department of health services.
2. "Director" means the director of the department of health services.
3. "Hearing evaluation services" means services which include the identification, testing, evaluation and initiation of follow-up services as defined in the rules and regulations of the department, as provided by section 36-899.03.
4. "Hearing screening evaluation" means the evaluation of the ability to hear certain frequencies at a consistent loudness.
5. "Private education program" means all programs of private education offering courses of study for grades, kindergarten through the twelfth grade of high school.
6. "Public education program" means all kindergarten, primary and secondary programs of education within the public school system, including but not beyond the twelfth grade of common or high school.

### 36-899.01. Program for all school children; administration

A. A program of hearing evaluation services is established by the department. Such services shall be administered to all children as early as possible, but in no event later than the first year of attendance in any public or private education program, or residential facility for children with disabilities, and thereafter as circumstances permit until the child has attained the age of sixteen years or is no longer enrolled in a public or private education program.

B. The program of hearing evaluation services for children in a public education program shall be administered by the department with the aid of the department of education.

## 9 A.A.C. 13, Article 1, Hearing Screening

### 36-899.02. Powers of the department; limitations

A. The department may, in administering the program of hearing evaluation services:

1. Provide consulting services, establish or supplement hearing evaluation services in local health departments, public or private education programs or other community agencies.
2. Provide for the training of personnel to administer hearing screening evaluations.
3. Delegate powers and duties to other state agencies, county and local health departments, county and local boards of education or boards of trustees of private education programs or other community agencies to develop and maintain periodic hearing evaluation services.
4. Provide services by contractual arrangement for the development and maintenance of periodic hearing evaluation services.
5. Accept reports of hearing evaluation from qualified medical or other professional specialists employed by parents or guardians for hearing evaluation when such reports are submitted to the department.

B. The department shall not replace any qualified existing service.

### 36-899.03. Rules and regulations

The director shall develop rules and regulations governing standards, procedures, techniques and criteria for conducting and administering hearing evaluation services.

### 36-899.04. Parent, guardian may refuse test

No child shall be required to submit to any test required by this chapter if a parent or guardian of the child objects and submits a statement of such objection to the agency administering such hearing evaluation services.

**GAME AND FISH COMMISSION**  
Title 12, Chapter 4, Game and Fish Commission



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** June 5, 2019

**SUBJECT: GAME AND FISH COMMISSION (R19-0706)**  
Title 12, Chapter 4, Game and Fish Commission

**New Article:** Article 10

**New Section:** R12-4-1001, R12-4-1002, R12-4-1003, R12-4-1004,  
R12-4-1005

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This rulemaking from the Game and Fish Commission (Commission) seeks to add a new article and rules to Title 12, Chapter 4 relating to Off-Highway Vehicle (OHV) use.

During the Second Regular Session of the 48th Legislature, the Legislature amended A.R.S. Title 28 to regulate the use of off-highway vehicles more closely and authorized the Arizona Department of Transportation to administer an OHV user indicia program. The Commission states that the goal of these regulations is to provide better OHV management and protection of natural resources while maintaining access. Funds generated from this program will be used to help ensure sustainable opportunities by bolstering grant programs that pay for maintenance, signage, habitat mitigation, education, and enforcement.

The Commission is conducting this rulemaking to specify the minimum standards for an educational course of instruction in off-highway safety and environmental ethics to be approved; set the maximum fee that can be charged by providers of an approved educational course; and adopt the current sound measurement standard of the society of automotive engineers for

all-terrain vehicles and motorcycles and the current sound measurement standard for the international organization for standardization for all other OHVs.

During the Second Regular Session of the 53rd Legislature, the Legislature amended A.R.S. Titles 28 and 17 to allow the Commission to administer the nonresident off-highway user indicia program. In this rulemaking, the Commission is proposing rules to establish the application procedure, indicia placement, and user fee associated with the nonresident OHV user indicia prescribed under A.R.S. § 28-1177.

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

Yes. The Commission cites to general and specific authority for these rules.

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

Yes. Proposed rule R12-4-1003 authorizes the provider of an approved educational course of instruction in basic off-highway vehicle safety and ethics to collect a fee that does not exceed \$300.

**3. Summary of the agency's economic impact analysis:**

In this rulemaking, the Commission is adopting rules that will specify standards for off-highway vehicle (OHV) recreation. The Commission indicates that OHV recreation has increased by 347% since 1998. OHV recreation can damage numerous aspects of the wildlife habitat including soil, vegetation, and streambeds. The Commission is establishing minimum requirements for OHV training in order to mitigate the environmental damage that untrained OHV users can cause.

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

The Commission is required by statute to create these rules. The costs on the regulated public are minimal, and the benefits of protecting the environment from untrained OHV operators are significant. The benefits outweigh the costs.

**5. What are the economic impacts on stakeholders?**

Key stakeholders are the Commission, the Department, OHV users, educational course providers, and the general public.

The Commission incurred the costs associated with conducting this rulemaking. The Department will incur the costs associated with approving OHV educational courses. The Department also offers a low-cost online course for OHV users. The economic impact for these stakeholders is anticipated to be minimal.

OHV users may have minimal additional administrative expenses as part of this rulemaking. OHV educational courses are required by statute, not rules. The Commission notes that OHV recreation is a voluntary activity, so only those choosing to participate will pay any fees.

The providers of OHV educational courses will benefit from this rulemaking because OHV users will be required to take an approved course. Providers will be able to charge a fee for an approved course that does not exceed \$300.

The general public will benefit from decreased environmental degradation.

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

The Commission did not receive any public or stakeholder comments in response to this rulemaking.

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

The Commission amended R12-4-1002(A) between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking to include the title of the Department's OHV Law Enforcement Program Manager. This amendment was done to further clarify where and to whom a person should submit a request for course approval.

The Commission also made additional grammatical and stylistic changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

These changes are not substantial under A.R.S. § 41-1025.

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

Not applicable. There is no corresponding federal law. These rules are based on state law.

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

Yes. The authorization for an approved course under R12-4-1002 falls within the definition of a "general permit" under A.R.S. § 41-1001(11). The rule complies with A.R.S. § 41-1037.

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

Not applicable. The Commission did not review or rely on a study in conducting this rulemaking.

**11. Conclusion**

The Commission seeks to create rules relating to OHV use in Arizona. The proposed rules are clear, concise, understandable, and effective. The Commission's justification for this rulemaking is thorough. The Commission accepts the usual 60-day delayed effective date for these rules. Council staff recommends approval of this rulemaking.



June 4, 2019

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

**Re: A.A.C. Title 12. Natural Resources, Chapter 4. Game and Fish Commission  
Article 10. Off-highway Vehicles**

Dear Ms Sornsin:

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

In compliance with R1-6-201(A)(1), the Department provides you with the following information:

- a. The rulemaking record closed on May 10, 2019.
- b. This rulemaking activity is not related to the five-year-review report approved by the Council.
- c. This rulemaking establishes new fees (the fee a provider may charge for an approved education course and the fee for a Nonresident Off-highway Vehicle User Indicia).
- d. This rulemaking does not contain a fee increase.
- e. An immediate effective date is not requested.
- f. The preamble discloses a reference to all studies relevant to the rule that the agency reviewed and either did or did not rely on in its evaluation of, or justification for, the rule.
- g. The preparer of the Economic, Small Business, and Consumer Impact Statement did not notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule as the Commission determined that the implementation of the amended rule does not require any new full-time employees.

**azgfd.gov | 602.942.3000**

**5000 W. CAREFREE HIGHWAY, PHOENIX AZ 85086**

**GOVERNOR: DOUGLAS A. DUCEY COMMISSIONERS: CHAIRMAN, JAMES S. ZIELER, ST. JOHNS | ERIC S. SPARKS, TUCSON | KURT R. DAVIS, PHOENIX  
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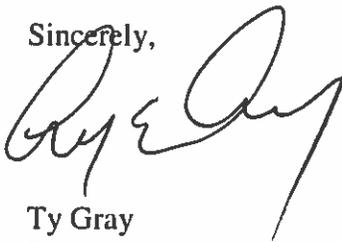
**Re: A.A.C. Title 12. Natural Resources, Chapter 4. Game and Fish Commission Article 10.  
Off-highway Vehicles**

Page 2

**h. Items included in the rulemaking package are as follows:**

- Signed cover letter
- Notice of Final Rulemaking
- Economic Impact Statement
- Materials Incorporated by Reference
- Authorizing statute: A.R.S. § 17-231(A)(1)
- Implementing statute: A.R.S. §§ 28-1171, 28-1172, 28-1173, 28-1174, 28-1175, 28-1177, 28-1178, and 28-1179
- Definitions of terms contained in statute or other rules and used in the rulemaking

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Gray', is written over the word 'Sincerely,'.

Ty Gray  
Director

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

**PREAMBLE**

- 1. Article, Part, or Section Affected (as applicable)                      Rulemaking Action**
- |            |             |
|------------|-------------|
| Article 10 | New Article |
| R12-4-1001 | New Section |
| R12-4-1002 | New Section |
| R12-4-1003 | New Section |
| R12-4-1004 | New Section |
| R12-4-1005 | New Section |
- 2. Citations to the agency’s statutory authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute:        A.R.S. § 17-231(A)(1), (A)(4), and (A)(8)
- Implementing statute:      A.R.S. §§ 28-1171, 28-1172, 28-1173, 28-1174, 28-1175, 28-1177, 28-1178, and 28-1179
- 3. The effective date of the rules:** Pursuant to A.R.S. § 41-1032, the rules become effective sixty days after being filed in the office of the Secretary of State.
- a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
- Not applicable.
- b. If the agency selected a date later than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(B):**
- Not applicable.
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
- Notice of Rulemaking Docket Opening: 25 A.A.R. 124, January 18, 2019
- Notice of Proposed Rulemaking: 25 A.A.R. 128, January 18, 2019
- 5. The agency’s contact person who can answer questions about the rulemaking:**
- Name:            Celeste Cook, Rules and Policy Manager
- Address:        Arizona Game and Fish Department  
5000 W. Carefree Highway  
Phoenix, AZ 85086

Telephone: (623) 236-7390  
Fax: (623) 236-7677  
E-mail: CCook@azgfd.gov

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

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

Off-highway vehicle (OHV) recreation is one of the most popular recreational activities taking place on public and state lands in Arizona. The Arizona Off-Highway Vehicle Program was created by the Legislature in 1991 to manage off-highway vehicle (OHV) use in Arizona. The legislation defined the parameters for off-highway vehicle use in Arizona and created an OHV Recreation Fund to be used to meet the needs of OHV recreation.

The use of OHVs has increased 347% since 1998; and has outpaced the existing funding to manage that growth, protect wildlife habitat, and help maintain recreational access. During the Second Regular Session of the 48th Arizona State Legislature, the Legislature amended A.R.S. Title 28 to regulate the use of off-highway vehicles more closely and authorize the Arizona Department of Transportation to administer an off-highway vehicle user indicia program. The goal of these regulations is to provide better OHV management and protection of natural resources while maintaining access. Funds generated from this program will be used to help ensure sustainable opportunities by bolstering grant programs that pay for maintenance, signage, habitat mitigation, education and enforcement.

The Commission proposes to pursue rulemaking to specify the minimum standards for an educational course of instruction in off-highway safety and environmental ethics to be approved; establish a fee that is reasonable and commensurate for the educational course; and adopt the current sound measurement standard of the society of automotive engineers for all-terrain vehicles and motorcycles and the current sound measurement standard of the international organization for standardization for all other OHVs.

In addition, during the Second Regular Session of the 53rd Arizona State Legislature, the Legislature amended A.R.S. Titles 28 and 17 to allow the Arizona Game and Fish Commission to administer the nonresident off-highway user indicia program. The Commission proposes to pursue rulemaking to establish the application procedure, indicia placement, and user fee associated with the nonresident off-highway vehicle user indicia prescribed under A.R.S. § 28-1177.

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

The agency did not rely on any study in its evaluation of or justification for the rule.

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

Not applicable

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

The Commission anticipates the proposed rulemaking will have a positive economic impact on the provider of an educational course of instruction that is approved by the Department. A course provider is not required to have the course approved by the Department. However, there is an economic advantage to obtaining the Department's approval because under A.R.S. § 28-1174(G) a judge may require a person who violates the statute to take an approved course. The provider of an approved course may also charge any fee up to the course fee established in this rulemaking. In determining the maximum fee that the provider of an approved educational course of instruction in off-highway vehicle safety and environmental ethics may charge, the Director reviewed fees currently charged for related courses. For example: the Motorcycle Safety Foundation currently charges \$185 for basic rider training; the ATV Safety Institute charges \$55 to \$150 for ATV Rider training depending on the student's age. The Director set the maximum fee at an amount believed to be consistent with fees currently charged, allowing for market competition among providers and enabling providers to increase the fee over time. Because of the course fee, the rulemaking may have economic impact on those who participate in an approved course, either voluntarily or under court order. However, the Department offers a low-cost online course to the public through Kalkomey Enterprises, LLC; and has partnered with the Recreational Off-highway Vehicle Association and the ATV Institute to offer no-fee online courses.

The Commission anticipates a minimal economic impact to qualified persons and business entities seeking to operate OHVs, as defined under A.R.S. § 28-1177. Depending on the owner's declared use, costs may include additional administrative expenses for preparing the prescribed application and a nominal user fee for each ATV (all-terrain vehicle) or OHV registered with the Department under A.R.S. § 28-1179.

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

R12-4-1002(A) was amended to include the title of the Department's OHV Law Enforcement Program Manager to further clarify where and to whom a person may submit a request for course approval.

In addition, minor grammatical and style corrections were made at the request of the Governor's Regulatory Review Council staff.

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

The Notice of Proposed Rulemaking was published in the Arizona Administrative Register on January 18, 2019; the official public comment period began January 18, 2019 and ended on February 18, 2019. The Department also issued a press release regarding the proposed changes included in the Notice of Proposed Rulemaking and the Department's contact information for persons interested in submitting a comment. The Department did not receive any public or stakeholder comments in response to the proposed rulemaking.

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

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

The authorization for an approved course described in R12-4-1002 falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).The rule complies with A.R.S. § 41-1037.

The Nonresident Off-highway Vehicle User Indicia described in R12-4-1005 falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).The rule complies with A.R.S. § 41-1037.

No other rules included in this rulemaking package require the issuance of a regulatory permit, license, or agency authorization.

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

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

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

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

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

Society of Automotive Engineers, J1287, Measurement of Exhaust Sound Pressure Levels of Stationary Motorcycles, April 2017, available from SAE International, 400 Commonwealth Dr., Warrendale, PA 15096 or online at [www.sae.org](http://www.sae.org), incorporated under R12-4-1004.

International Organization for Standardization, ISO5130:2007, Acoustics--Measurements of Sound Pressure Level Emitted by Stationary Road Vehicles, 2077, available from American National Standards Institute, Attention Customer Service Department, 25 W. 43rd St., 4th Floor, New York, NY 10056 or online at [www.iso.org](http://www.iso.org), incorporated under R12-4-1004.

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

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

**15. The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**  
**ARTICLE 10. OFF-HIGHWAY VEHICLES**

Section

- R12-4-1001.     Minimum Standards for an Approved Off-highway Vehicle Educational Course
- R12-4-1002.     Course-approval Procedure
- R12-4-1003.     Fee for an Approved Course
- R12-4-1004.     Off-highway Vehicle Sound-level Requirements
- R12-4-1005.     Nonresident Off-highway Vehicle User Indicia

## ARTICLE 10. OFF-HIGHWAY VEHICLES

### **R12-4-1001. Minimum Standards for an Approved Off-highway Vehicle Educational Course**

The Department may approve an educational course of instruction in basic off-highway vehicle (OHV) safety and environmental ethics, provided the course meets the following minimum standards:

1. Course content. The course shall provide information regarding:
  - a. OHV safety;
  - b. Responsibilities of users of OHVs;
  - c. Use of an OHV in a manner that does not harm the natural terrain, plants, or animals;
  - d. Use of an OHV in a manner that minimizes air pollution; and
  - e. State statutes and rules regarding use of OHVs.
2. Course procedures. The course provider shall:
  - a. Use a written examination to measure the extent to which a participant learned the course content; and
  - b. Provide a certificate of completion to a participant who receives a score of 80% or above on the written examination or that demonstrates an equivalent proficiency.

### **R12-4-1002. Course-approval Procedure**

- A. To obtain approval of an educational course of instruction in basic off-highway vehicle (OHV) safety and environmental ethics, the course provider shall submit an application to the Department's OHV Law Enforcement Program Manager using a form furnished by the Department. The provider shall include the following information on the application form:
  1. Name of provider
  2. If the provider is not an individual, the name of the person who will maintain contact with the Department
  3. Business address
  4. Business email address and
  5. Business and contact telephone numbers.
- B. In addition to the application form required under subsection (A), a provider shall include a copy of all of the following:
  1. The curriculum that will be used to provide the educational course;
  2. Any materials that will be provided to course participants;
  3. The written examination required under R12-4-1001(2)(a); and
  4. The certificate of completion required under R12-4-1001(2)(b).
- C. The Department shall either approve or deny a request to approve an educational course within 60 days of receiving the application. The Department shall not approve an educational course that fails to meet the requirements established under R12-4-1001 or this Section. The Department shall provide a written notice to the course provider stating the reason for the denial.
- D. The provider of an educational course of instruction that is not approved by the Department may appeal the

denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

**R12-4-1003. Fee for an Approved Course**

- B.** Under A.R.S. § 28-1175(B), the provider of an approved educational course of instruction in basic off-highway vehicle safety and environmental ethics may collect a fee from each participant that:
1. Is reasonable and commensurate for the course, and
  2. Does not exceed \$300.

**R12-4-1004. Off-highway Vehicle Sound-level Requirements**

- A.** A peace officer who has reason to believe that an off-highway vehicle (OHV) is being operated in violation of A.R.S. § 28-1179(A)(3) may direct the operator to submit the OHV to an onsite test to measure the OHV's sound level. In accordance with A.R.S. § 28-1179(A)(3), the sound level of an OHV shall be measured using the following procedures, which are incorporated by reference and are available for inspection at the Arizona Game and Fish Department, 5000 W. Carefree Highway, Phoenix, Arizona 85086:
1. All terrain vehicle or motorcycle. Society of Automotive Engineers, J1287, Measurement of Exhaust Sound Pressure Levels of Stationary Motorcycles, April 2017, available from SAE International, 400 Commonwealth Dr., Warrendale, PA 15096 or online at [www.sae.org](http://www.sae.org); and
  2. Other OHV. International Organization for Standardization, ISO 5130:2007, Acoustics-Measurements of Sound Pressure Level Emitted by Stationary Road Vehicles, 2007, May 31, 2007 Edition 2, available from American National Standards Institute, Attention Customer Service Department, 25 W. 43rd St., 4th Floor, New York, NY 10056 or online at [www.iso.org](http://www.iso.org).
- B.** If a peace officer directs the operator of an OHV to submit the OHV to an onsite test to measure the OHV's sound level, the operator shall allow the OHV and associated equipment to be tested. If the peace officer believes that more than one test of the OHV's sound level is necessary to ensure that an accurate measure is obtained, the operator shall allow multiple tests.
- C.** If it is determined that an OHV is being operated in violation of A.R.S. § 28-1179(A)(3), the operator of the OHV shall:
1. Immediately stop operating the OHV; and
  2. Ensure the vehicle is not operated again until it can be operated in compliance with A.R.S. § 28-1179(A)(3), except:
    - a. During a period of emergency; or
    - b. When the operation is directed by a peace officer or other public authority.
- D.** This Section does not include any later amendments or editions of the incorporated materials.

**R12-4-1005. Nonresident Off-highway Vehicle User Indicia**

- A.** The owner or operator of an all-terrain vehicle (ATV) or off-highway vehicle (OHV) as defined under A.R.S. § 28-1171 shall not operate the ATV or OHV off-highway in this state without an Arizona off-highway vehicle

user indicia. This requirement only applies to an ATV or OHV that:

1. Is designed by the manufacturer primarily for travel over unimproved terrain.
  2. Has an unladen weight of two thousand five hundred pounds or less.
- B.** For lawful Arizona off-highway operation, the owner or operator of a qualifying nonresident ATV or OHV shall apply to the Department for an off-highway vehicle user indicia as prescribed under A.R.S. § 28-1177. The owner or operator shall submit to the Department:
1. The nonresident off-highway vehicle user indicia application furnished by the Department and available on the Department's website.
  2. The fee established under subsection (C)(1), and
  3. The convenience fee established under subsection (C)(2).
- C.** As authorized under A.R.S. § 28-1177:
1. The fee for the nonresident off-highway vehicle user indicia is \$25.
  2. The Department may also collect and retain a reasonable and commensurate fee for its services.
- D.** The owner or operator of the ATV or OHV titled or registered out-of-state shall display the nonresident off-highway user indicia in a manner that is clearly visible to outside inspection:
1. For vehicles with three or more wheels, on the left side rear quadrant of the vehicle.
  2. For two-wheeled vehicles, the indicia shall be displayed on the left fork leg.
- E.** A printed receipt or an electronic copy of the receipt of payment for an annual decal that is purchased online shall serve as a temporary permit for a period of 30 days from the date of purchase.
- F.** Under A.R.S. § 28-1178, a person may operate an ATV or OHV in this state without the nonresident off-highway user indicia required under A.R.S. § 28-1177 when any one of the following applies:
1. The person is loading or unloading an ATV or OHV from a vehicle.
  2. The person is participating in an off-highway special event.
  3. The person is operating an ATV or OHV:
    - a. During an emergency or as directed by a peace officer or other public authority.
    - b. Exclusively for agriculture, ranching, construction, mining or building trade purposes.
    - c. Exclusively on private land.

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**  
**ARTICLE 10. OFF-HIGHWAY VEHICLES**  
**R12-4-1001, R12-4-1002, R12-4-1003, R12-4-1004, and R12-4-1005**  
**Economic, Small Business and Consumer Impact Statement**

**A. Economic, small business and consumer impact summary:**

**1. Identification of the proposed rulemaking.**

Off-highway vehicle (OHV) recreation is one of the most popular recreational activities taking place on public and state lands in Arizona. The Arizona Off-highway Vehicle Program was created by the Legislature in 1991 to manage OHV use in Arizona. The legislation defined the parameters for off-highway vehicle use in Arizona and created an OHV Recreation Fund to be used to meet the needs of OHV recreation.

The use of OHVs has increased 347% since 1998; and has outpaced the existing funding to manage that growth, protect wildlife habitat, and help maintain recreational access. During the Second Regular Session of the 48th Arizona State Legislature, the Legislature amended A.R.S. Title 28 to regulate the use of off-highway vehicles more closely and authorize the Arizona Department of Transportation to administer an off-highway vehicle user indicia program. The goal of these regulations is to provide better OHV management and protection of natural resources while maintaining access. Funds generated from this program will be used to help ensure sustainable opportunities by bolstering grant programs that pay for maintenance, signage, habitat mitigation, education and enforcement.

The Commission proposes to pursue rulemaking to specify the minimum standards for an educational course of instruction in off-highway safety and environmental ethics to be approved; establish a fee that is reasonable and commensurate for the educational course, and adopt the current sound measurement standard of the society of automotive engineers for all-terrain vehicles and motorcycles and the current sound measurement standard of the international organization for standardization for all other OHVs.

In addition, during the Second Regular Session of the 53rd Arizona State Legislature, the Legislature amended A.R.S. Titles 28 and 17 to allow the Arizona Game and Fish Commission to administer the nonresident off-highway user indicia program. The Commission proposes to pursue rulemaking to establish the application procedure, indicia placement, and user fee associated with the nonresident off-highway vehicle user indicia prescribed under A.R.S. § 28-1177.

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

The use of OHVs has increased 347% since 1998; and has outpaced the existing funding to manage that growth, protect wildlife habitat, and help maintain recreational access.

**(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.**

Habitat varies from species to species, but it encompasses all of the needs of that species. There are four basic elements: food, water, shelter and adequate space. Also included is the arrangement of the basic elements to one another. Each species must have all the basic elements in the necessary order to survive. Animals survive winter by creating fat reserves and limiting activity to conserve energy. Fat is needed to sustain body temperature in the extreme cold. Since plants are dormant and maintain low nutritional value during the winter, creation of sufficient energy reserves during the summer is critical. OHVs can destroy the plants animals need to create fat reserves. Vegetation also reduces erosion by increasing the stability of the soil. If the plant cover is destroyed the soil can be eroded by wind and rain. Impacts to soils are acceptable if managed and confined to trail corridors. Streams and their banks are exceptionally fragile. OHVs traveling along banks or through stream beds cause stream sedimentation. Stream sedimentation is the process where the stream fills with silt, soil and gravel and slowly fills in shallow pools. The pools that once contained fish and other aquatic species may become nothing but moist sand.

**(c) The estimated change in frequency of the targeted conduct expected from the rule change.**

The Commission does not anticipate the frequency of off-highway will be reduced; however, establishing the minimum standards for an educational course of instruction in off-highway safety and environmental ethics; incorporating by reference the current sound measurement standard of the society of automotive engineers for all-terrain vehicles and motorcycles and the current sound measurement standard of the international organization for standardization for all other OHVs; and establishing the application procedure, indicia placement, and user fee associated with the nonresident off-highway vehicle user indicia prescribed under A.R.S. § 28-1177 will aid in mitigating the environmental damage caused by off-highway recreation.

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

The rulemaking will have a positive economic impact on the provider of an educational course of instruction that is approved by the Department. A course provider is not required to have the course approved by the Department. However, there is an economic advantage to obtaining the Department's approval because under A.R.S. § 28-1174(G) a judge may require a person who violates the statute to take an approved course. The provider of an approved course may also charge any fee up to the course fee established in this rulemaking. In determining the maximum fee that the provider of an approved educational course of instruction in off-highway vehicle safety and environmental ethics may charge, the Director reviewed fees currently charged for related courses. For example: the Motorcycle Safety Foundation currently charges \$185 for basic rider training; the ATV Safety Institute charges \$55 to \$150 for ATV Rider training depending on the student's age. The Director set the maximum fee at an amount believed to be consistent with fees currently charged, allowing for market competition among providers and enabling providers to increase the fee over time. Because of the course fee, the rulemaking may have economic impact on those who participate in an approved course, either voluntarily or under court order. However, the Department offers a low-cost online course to the public through Kalkomey Enterprises, LLC;

and partners with the Recreational Off-highway Vehicle Association and the ATV Institute to offer no-fee online courses.

The Commission anticipates a minimal economic impact to qualified persons and business entities seeking to operate OHVs, as defined under A.R.S. § 28-1177. Depending on the owner's declared use, costs may include additional administrative expenses for preparing the prescribed application and a nominal user fee for each ATV or OHV registered with the Department under A.R.S. § 28-1179. It is important to note, operating an all-terrain or off-highway vehicle in this state is a voluntary recreational activity and only those persons who choose to participate in the activity will pay the fee. The Commission does not anticipate the fee will significantly affect a person's ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity.

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

Name: Celeste Cook, Director's Office Rules and Policy Manager  
Address: Arizona Game and Fish Department  
5000 W. Carefree Highway  
Phoenix, Arizona 85086  
Telephone: (623) 236-7390  
Fax: (623) 236-7677  
E-mail: CCook@azgfd.gov

**B. The 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 who will be directly affected by and bear the costs of the proposed rulemaking:

Arizona Game and Fish Department  
Nonresidents who participate in off-highway recreational activities in Arizona

Persons who directly benefit from the proposed rulemaking:

Arizona Game and Fish Department  
Arizona State Parks Department  
Arizona Department of Transportation  
General public  
State of Arizona

**3. Cost benefit analysis:**

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

Minimal	less than \$1,000
Moderate	\$1,000 to \$9,999

Substantial                    \$10,000 or more

- (a) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.**

The Commission anticipates the Department will incur a substantial impact implementing the nonresident off-highway user indicia program: costs associated with rulemaking, implementation of the rules, which includes system programming, and the resources necessary to administer the program. However, the state of Arizona and the various agencies involved with the implementation of the nonresident off-highway vehicle indicia legislation, as well as the public will benefit substantially. Funds generated from this program will be used to help ensure sustainable opportunities by bolstering grant programs that pay for maintenance, signage, habitat mitigation, education and enforcement.

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

The Commission does not anticipate the proposed rulemaking will significantly affect political subdivisions of this state.

- (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 Commission anticipates the proposed amendments will have no substantial impact on businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant. The Commission's intent in the proposed rulemaking is to provide better OHV management and protection of natural resources while maintaining access.

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

The Commission anticipates the proposed amendments will have no substantial impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking. Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates persons directly affected by the rule will not incur any additional costs as a result of the rulemaking. For most businesses directly affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be moderate, if at all.

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

- (a) Identification of the small businesses subject to the proposed rulemaking.**

Off-highway education course providers

Businesses that sell ATVs and/or OHVs

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

The Commission anticipates the proposed rulemaking will not create additional costs for compliance.

**(c) Description of the methods that the agency may use to reduce the impact on small businesses.**

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed rules do not place any reporting requirements on businesses.

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

The Commission anticipates the proposed rulemaking will result in a minimal impact to nonresidents who participate in off-highway recreational activities. The Commission anticipates a minimal impact to qualified persons and business entities seeking to operate OHVs, as defined under A.R.S. § 28-1177. Depending on the owner's declared use, costs may include additional administrative expenses for preparing the prescribed application and a nominal user fee for each ATV or OHV registered with the Department under A.R.S. § 28-1179. It is important to note, operating an all-terrain or off-highway vehicle in this state is a voluntary recreational activity and only those persons who choose to participate in the activity will pay the fee. The Commission does not anticipate the fee will significantly affect a person's ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity.

**6. Statement of the probable effect on state revenues.**

The proposed rulemaking will not significantly impact state revenues.

**7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.**

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking. The Commission holds that the benefits of the proposed rulemaking outweigh any costs.

**8. Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

For this rulemaking, the Commission relied on empirical data based on agency experience and observations, which included comments from the public, Arizona State Parks Department, Arizona Transportation Department and agency staff that administer and enforce the rules included in this rulemaking. The Department also solicited comment and information from industry professionals regarding the numbers of, types, and uses of off-highway vehicles. Additionally, the Commission relied on historical data (i.e., meeting notes from previous rulemaking teams, Department reports (sportsman data, violation data, etc.), other state agency rules, etc.), current processes, benchmarking with other states, and the Department's

overall mission. The subjects the rules address are based on statutory requirements rather than natural sciences, thus recommendations relied more heavily on empirical qualitative data using agency experience and observations instead of quantitative data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

- C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The 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.**

The Department tasked a team of subject matter experts to review and make recommendations for rules relating to off-highway vehicles. In its review, the team considered all comments from the public and agency staff that administer and enforce off-highway statutes and rules, historical data, current processes and environment, and the Department's overall mission. The team took a customer-focused approach, considering each recommendation from a resource perspective and determining whether the recommendation would cause undue harm to the Department's goals and objectives. The team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public. The Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.

**ARTICLE 10. OFF-HIGHWAY VEHICLES  
DEFINITIONS**

**17-101. Definitions**

**A.** In this title, unless the context otherwise requires:

1. "Angling" means the taking of fish by one line and not to exceed two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not to exceed two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that may lawfully be taken by any one person during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who does any of the following:
  - (a) Advertises for guiding services.
  - (b) Holds himself out to the public for hire as a guide.
  - (c) Is employed by a commercial enterprise as a guide.
  - (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
  - (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
15. "Open season" means the time during which wildlife may be lawfully taken.

16. "Possession limit" means the maximum limit, in number or amount of wildlife, that may be possessed at one time by any one person.
17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:
  - (a) A member of the armed forces of the United States on active duty and who is stationed in:
    - (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
    - (ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.
  - (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
18. "Road" means any maintained right-of-way for public conveyance.
19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife.
21. "Taxidermist" means any person who engages for hire in the mounting, refurbishing, maintaining, restoring or preserving of any display specimen.
22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
25. "Youth" means a person who is under eighteen years of age.
26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

**B.** The following definitions of wildlife shall apply:

1. Aquatic wildlife are all fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
2. Game mammals are deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
3. Big game are wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
4. "Trophy" means:
  - (a) A mule deer buck with at least four points on one antler, not including the eye-guard point.
  - (b) A whitetail deer buck with at least three points on one antler, not including the eye-guard point.
  - (c) A bull elk with at least six points on one antler, including the eye-guard point and the brow tine point.

- (d) A pronghorn (antelope) buck with at least one horn exceeding or equal to fourteen inches in total length.
- (e) Any bighorn sheep.
- (f) Any bison (buffalo).
- 5. Small game are cottontail rabbits, tree squirrels, upland game birds and migratory game birds.
- 6. Fur-bearing animals are muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
- 7. Predatory animals are foxes, skunks, coyotes and bobcats.
- 8. Nongame animals are all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
- 9. Upland game birds are quail, partridge, grouse and pheasants.
- 10. Migratory game birds are wild waterfowl, including ducks, geese and swans; sandhill cranes; all coots, all gallinules, common snipe, wild doves and bandtail pigeons.
- 11. Nongame birds are all birds except upland game birds and migratory game birds.
- 12. Raptors are birds that are members of the order of falconiformes or strigiformes and include falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
- 13. Game fish are trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
- 14. Nongame fish are all the species of fish except game fish.
- 15. Trout means all species of the family salmonidae, including grayling.

#### **28-1171. Definitions**

In this article, unless the context otherwise requires:

- 1. "Access road" means a multiple use corridor that meets all of the following criteria:
  - (a) Is maintained for travel by two-wheel vehicles.
  - (b) Allows entry to staging areas, recreational facilities, trail heads and parking.
  - (c) Is determined to be an access road by the appropriate land managing authority.
- 2. "Closed course" means a maintained facility that uses department approved dust abatement and fire abatement measures.
- 3. "Highway" means the entire width between the boundary lines of every way publicly maintained by the federal government, the department, a city, a town or a county if any part of the way is generally open to the use of the public for purposes of conventional two-wheel drive vehicular travel. Highway does not include routes designated for off-highway vehicle use.
- 4. "Mitigation" means the rectification or reduction of existing damage to natural resources, including flora, fauna and land or cultural resources, including prehistoric or historic archaeological sites, if the damage is caused by off-highway vehicles.
- 5. "Off-highway recreation facility" includes off-highway vehicle use areas and trails designated for use by off-highway vehicles.

6. "Off-highway vehicle":
  - (a) Means a motorized vehicle that is operated primarily off of highways and that is designed, modified or purpose-built primarily for recreational nonhighway all-terrain travel.
  - (b) Includes a tracked or wheeled vehicle, utility vehicle, all-terrain vehicle, motorcycle, four-wheel drive vehicle, dune buggy, sand rail, amphibious vehicle, ground effects or air cushion vehicle and any other means of land transportation deriving motive power from a source other than muscle or wind.
  - (c) Does not include a vehicle that is either:
    - (i) Designed primarily for travel on, over or in the water.
    - (ii) Used in installation, inspection, maintenance, repair or related activities involving facilities for the provision of utility or railroad service or used in the exploration or mining of minerals or aggregates as defined in title 27.
7. "Off-highway vehicle special event" means an event that is endorsed, authorized, permitted or sponsored by a federal, state, county or municipal agency and in which the event participants operate off-highway vehicles on specific routes or areas designated by a local authority pursuant to section 28-627.
8. "Off-highway vehicle trail" means a multiple use corridor that is both of the following:
  - (a) Open to recreational travel by an off-highway vehicle.
  - (b) Designated or managed by or for the managing authority of the property that the trail traverses for off-highway vehicle use.
9. "Off-highway vehicle use area" means the entire area of a parcel of land, except for approved buffer areas, that is managed or designated for off-highway vehicle use.

**R12-4-101. Definitions**

- A.** In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

“Bobcat seal” means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

“Bonus point” means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

“Certificate of insurance” means an official document issued by the sponsor's and sponsor's vendors or subcontractors insurance carrier providing insurance against claims for injury to persons or damage to property which may arise from or in connection with the solicitation or event as determined by the Department.

“Commission Order” means a document adopted by the Commission that does one or more of the following:

Open, close, or alter seasons,

Open areas for taking wildlife,

Set bag or possession limits for wildlife,

Set the number of permits available for limited hunts, or

Specify wildlife that may or may not be taken.

“Day-long” means the 24-hour period from one midnight to the following midnight.

“Department property” means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

“Hunt area” means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

“Hunt number” means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

“Hunt permits” means the number of hunt permit-tags made available to the public as a result of a Commission Order.

“Hunt permit-tag” means a tag for a hunt for which a Commission Order has assigned a hunt number.

“Identification number” means the number assigned to each applicant or license holder by the Department, as established under R12-4-111.

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

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

“Management unit” means an area established by the Commission for management purposes.

“Nonpermit-tag” means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

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

“Proof of purchase,” for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

“Restricted nonpermit-tag” means a tag issued for a supplemental hunt as established under R12-4-115.

“Solicitation” means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

“Solicitation material” means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

“Sponsor” means the person or persons conducting a solicitation or event.

“Stamp” means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

“Tag” means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

“Waterdog” means the larval or metamorphosing stage of a salamander.

“Wildlife area” means an area established under 12 A.A.C. 4, Article 8.

**B.** If the following terms are used in a Commission Order, the following definitions apply:

“Antlered” means having an antler fully erupted through the skin and capable of being shed.

“Antlerless” means not having an antler, antlers, or any part of an antler erupted through the skin.

“Bearded turkey” means a turkey with a beard that extends beyond the contour feathers of the breast.

“Buck antelope” means a male pronghorn antelope.

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

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

“Bull elk” means an antlered elk.

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

“Ram” means any male bighorn sheep.

“Rooster” means a male pheasant.

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

**ARTICLE 10. OFF-HIGHWAY VEHICLES  
STATUTORY AUTHORITY**

**17-231. General powers and duties of the commission**

**A.** The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

**B.** The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.

8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
  9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
  10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
  11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
  12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.
  13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.
  14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.
- C.** The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.
- D.** The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

#### **28-1171. Definitions**

In this article, unless the context otherwise requires:

1. "Access road" means a multiple use corridor that meets all of the following criteria:

- (a) Is maintained for travel by two-wheel vehicles.
  - (b) Allows entry to staging areas, recreational facilities, trail heads and parking.
  - (c) Is determined to be an access road by the appropriate land managing authority.
2. "Closed course" means a maintained facility that uses department approved dust abatement and fire abatement measures.
  3. "Highway" means the entire width between the boundary lines of every way publicly maintained by the federal government, the department, a city, a town or a county if any part of the way is generally open to the use of the public for purposes of conventional two-wheel drive vehicular travel. Highway does not include routes designated for off-highway vehicle use.
  4. "Mitigation" means the rectification or reduction of existing damage to natural resources, including flora, fauna and land or cultural resources, including prehistoric or historic archaeological sites, if the damage is caused by off-highway vehicles.
  5. "Off-highway recreation facility" includes off-highway vehicle use areas and trails designated for use by off-highway vehicles.
  6. "Off-highway vehicle":
    - (a) Means a motorized vehicle that is operated primarily off of highways and that is designed, modified or purpose-built primarily for recreational nonhighway all-terrain travel.
    - (b) Includes a tracked or wheeled vehicle, utility vehicle, all-terrain vehicle, motorcycle, four-wheel drive vehicle, dune buggy, sand rail, amphibious vehicle, ground effects or air cushion vehicle and any other means of land transportation deriving motive power from a source other than muscle or wind.
    - (c) Does not include a vehicle that is either:
      - (i) Designed primarily for travel on, over or in the water.
      - (ii) Used in installation, inspection, maintenance, repair or related activities involving facilities for the provision of utility or railroad service or used in the exploration or mining of minerals or aggregates as defined in title 27.
  7. "Off-highway vehicle special event" means an event that is endorsed, authorized, permitted or sponsored by a federal, state, county or municipal agency and in which the event participants operate off-highway vehicles on specific routes or areas designated by a local authority pursuant to section 28-627.
  8. "Off-highway vehicle trail" means a multiple use corridor that is both of the following:
    - (a) Open to recreational travel by an off-highway vehicle.
    - (b) Designated or managed by or for the managing authority of the property that the trail traverses for off-highway vehicle use.
  9. "Off-highway vehicle use area" means the entire area of a parcel of land, except for approved buffer areas, that is managed or designated for off-highway vehicle use.

**28-1172. Applicability; private and Indian lands**

This article applies to all lands in this state except private land and Indian land.

**28-1173. Enforcement**

All peace officers of this state and counties or municipalities of this state and other duly authorized state employees may enforce this article.

**28-1174. Operation restrictions; violation; classification**

- A.** A person shall not drive an off-highway vehicle:
  - 1. With reckless disregard for the safety of persons or property.
  - 2. Off of an existing road, trail or route in a manner that causes damage to wildlife habitat, riparian areas, cultural or natural resources or property or improvements.
  - 3. On roads, trails, routes or areas closed as indicated in rules or regulations of a federal agency, this state, a county or a municipality or by proper posting if the land is private land.
  - 4. Over unimproved roads, trails, routes or areas unless driving on roads, trails, routes or areas where such driving is allowed by rule or regulation.
- B.** A person shall drive an off-highway vehicle only on roads, trails, routes or areas that are opened as indicated in rules or regulations of a federal agency, this state, a county or a municipality.
- C.** A person shall not operate an off-highway vehicle in a manner that damages the environment, including excessive pollution of air, water or land, abuse of the watershed or cultural or natural resources or impairment of plant or animal life, where it is prohibited by rule, regulation, ordinance or code.
- D.** A person shall not place or remove a regulatory sign governing off-highway vehicle use on any public or state land. This subsection does not apply to an agent of an appropriate federal, state, county, town or city agency operating within that agency's authority.
- E.** A person who violates subsection A, paragraph 1 is guilty of a class 2 misdemeanor.
- F.** A person who violates any other provision of this section is guilty of a class 3 misdemeanor.
- G.** In addition to or in lieu of a fine pursuant to this section, a judge may order the person to perform at least eight but not more than twenty-four hours of community restitution or to complete an approved safety course related to the off-highway operation of motor vehicles, or both.
- H.** Subsections A and B do not prohibit a private landowner or lessee from performing normal agricultural or ranching practices while operating an all-terrain vehicle or an off-highway vehicle on the private or leased land.

**28-1175. Instruction course; fee**

- A.** The Arizona game and fish department shall conduct or approve an educational course of instruction in off-highway vehicle safety and environmental ethics. The course shall include instruction on off-highway vehicle uses that limit air pollution and harm to natural terrain, vegetation and animals. Successful completion of the course requires successful passage of a written examination.
- B.** Any governmental agency, corporation or other individual that conducts a training or educational course, or both, that is approved by the Arizona game and fish department, the United States bureau of land management

or the United States forest service or that is approved or accepted by the all-terrain vehicle safety institute or the national off-highway vehicle conservation council may collect a fee from the participant that is reasonable and commensurate for the training and that is determined by the director of the Arizona game and fish department by rule.

**28-1177. Off-highway vehicle user fee; indicia; registration; state trust land recreational permit; exception**

- A.** A person shall not operate or allow the operation of an all-terrain vehicle or an off-highway vehicle in this state without either a resident or nonresident off-highway vehicle user indicia issued by the department if the all-terrain vehicle or off-highway vehicle meets both of the following criteria:
  - 1. Is designed by the manufacturer primarily for travel over unimproved terrain.
  - 2. Has an unladen weight of two thousand five hundred pounds or less.
- B.** A person shall apply to the department of transportation for a resident or nonresident off-highway vehicle user indicia by submitting an application prescribed by the department of transportation and a user fee for the indicia in an amount to be determined by the director of the department of transportation in cooperation with the director of the Arizona game and fish department and the Arizona state parks board. The resident or nonresident off-highway vehicle user indicia is valid for one year from the date of issuance and may be renewed. The department shall prescribe by rule the design and placement of the indicia.
- C.** When a person pays for a resident off-highway vehicle user indicia pursuant to this section, the person may request a motor vehicle registration if the vehicle meets all equipment requirements to be operated on a highway pursuant to article 16 of this chapter. If a person submits a signed affidavit to the department affirming that the vehicle meets all of the equipment requirements for highway use and that the vehicle will be operated primarily off of highways, the department shall register the vehicle for highway use and the vehicle owner is not required to pay the registration fee prescribed in section 28-2003. This subsection does not apply to vehicles that as produced by the manufacturer meet the equipment requirements to be operated on a highway pursuant to article 16 of this chapter.
- D.** The director shall deposit, pursuant to sections 35-146 and 35-147, seventy percent of the user fees collected pursuant to this section in the off-highway vehicle recreation fund established by section 28-1176 and thirty percent of the user fees collected pursuant to this section in the Arizona highway user revenue fund.
- E.** The Arizona game and fish department may provide for the purchase of nonresident off-highway vehicle user indicia and may impose an additional service fee in an amount to be determined by the Arizona game and fish commission by rule. The Arizona game and fish department shall deposit, pursuant to sections 35-146 and 35-147, the service fees collected pursuant to this subsection in the game and fish fund established by section 17-261.
- F.** An occupant of an off-highway vehicle with a resident or nonresident off-highway vehicle user indicia issued pursuant to this section who crosses state trust lands must comply with all of the rules and requirements under a state trust land recreational permit. All occupants of an off-highway vehicle with a resident or nonresident off-

highway vehicle user indicia shall obtain a state trust land recreational permit from the state land department for all other authorized recreational activities on state trust land.

- G.** This section does not apply to off-highway vehicles, all-terrain vehicles or off-road recreational motor vehicles that are used off-highway exclusively for agricultural, ranching, construction, mining, mining exploration or building trade purposes.
- H.** In consultation with the department of transportation, the Arizona game and fish department may adopt rules necessary to implement this section.

**28-1178. Operation of off-highway vehicles; exceptions**

A person may operate an all-terrain vehicle or an off-highway vehicle in this state without a resident or nonresident off-highway vehicle user indicia issued pursuant to section 28-1177 if any of the following applies:

1. The person is participating in an off-highway special event.
2. The person is operating an all-terrain vehicle or an off-highway vehicle on private land.
3. The person is loading or unloading an all-terrain vehicle or an off-highway vehicle from a vehicle.
4. During a period of emergency or if the operation is directed by a peace officer or other public authority.
5. The vehicle displays a valid dealer license plate that the department issues pursuant to section 28-4533.

**28-1179. Off-highway vehicle equipment requirements; rule making; exception**

- A.** An off-highway vehicle in operation in this state shall be equipped with all of the following:
  1. Brakes adequate to control the movement of the vehicle and to stop and hold the vehicle under normal operating conditions.
  2. Lighted headlights and taillights that meet or exceed original equipment manufacturer guidelines if operated between one-half hour after sunset and one-half hour before sunrise.
  3. Except when operating on a closed course, either a muffler or other noise dissipative device that prevents sound above ninety-six decibels. The director shall adopt the current sound measurement standard of the society of automotive engineers for all-terrain vehicles and motorcycles and the current sound measurement standard of the international organization for standardization for all other off-highway vehicles.
  4. A spark arrestor device that is approved by the United States department of agriculture and that is in constant operation except if operating on a closed course.
  5. A safety flag that is at least six by twelve inches and that is attached to the off-highway vehicle at least eight feet above the surface of level ground, if operated on sand dunes or areas designated by the managing agency.
- B.** A person who is under eighteen years of age may not operate or ride on an off-highway vehicle on public or state land unless the person is wearing protective headgear that is properly fitted and fastened, that is designed for motorized vehicle use and that has a minimum United States department of transportation safety rating.
- C.** In consultation with the department of transportation, the Arizona game and fish commission may:
  1. Adopt rules necessary to implement this section.

2. Prescribe additional equipment requirements not in conflict with federal laws.
- D.** This section does not apply to a private landowner or lessee performing normal agricultural or ranching practices while operating an all-terrain vehicle or an off-highway vehicle on the private or leased land in accordance with the landowner's or lessee's lease.

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**Acoustics — Measurements of sound  
pressure level emitted by stationary road  
vehicles**

*Acoustique — Mesurages du niveau de pression acoustique émis par  
les véhicules routiers en stationnement*



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## Foreword

ISO (the International Organization for Standardization) is a worldwide federation of national standards bodies (ISO member bodies). The work of preparing International Standards is normally carried out through ISO technical committees. Each member body interested in a subject for which a technical committee has been established has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work. ISO collaborates closely with the International Electrotechnical Commission (IEC) on all matters of electrotechnical standardization.

International Standards are drafted in accordance with the rules given in the ISO/IEC Directives, Part 2.

The main task of technical committees is to prepare International Standards. Draft International Standards adopted by the technical committees are circulated to the member bodies for voting. Publication as an International Standard requires approval by at least 75 % of the member bodies casting a vote.

Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. ISO shall not be held responsible for identifying any or all such patent rights.

ISO 5130 was prepared by Technical Committee ISO/TC 43, *Acoustics*, Subcommittee SC 1, *Noise*.

This second edition cancels and replaces the first edition (ISO 5130:1982), which has been technically revised.

## Introduction

This sound pressure level measurement procedure has been developed for use in the engineering evaluation of the sound pressure level performance of road vehicles in the vicinity of the exhaust systems. The method is intended to check vehicles in use and also to determine variations in the exhaust sound pressure level that can result from

- the wear, maladjustment or modification of particular components, when the defect does not appear by visual inspection;
- the partial or complete removal of devices reducing the emission of certain sound pressure levels.

It is possible to determine some of these variations by comparing the measurements with reference measurements made under similar conditions, for example during the type approval of the vehicle, using the same method. Other variations can be detected only when the engine is operated at a realistic load.

The document incorporates certain provisions of SAE J1492:1998-05, for measuring the sound pressure levels of exhaust systems of passenger cars and light trucks.



# Acoustics — Measurements of sound pressure level emitted by stationary road vehicles

## 1 Scope

This International Standard specifies a test procedure, environment and instrumentation for measuring the exterior sound pressure levels from road vehicles under stationary conditions, providing a continuous measure of the sound pressure level over a range of engine speeds. This International Standard applies only to road vehicles of categories L, M and N equipped with internal combustion engines.

The method is designed to meet the requirements of simplicity as far as they are consistent with reproducibility of results under the operating conditions of the vehicle.

It is within the scope of this International Standard to measure the stationary A-weighted sound pressure level during

- type approval measurements of vehicle;
- measurements at the manufacturing stage;
- measurements at official testing stations;
- measurements at roadside testing.

This International Standard specifies neither a method to check the exhaust sound pressure level when the engine is operated at realistic loads nor a method to check the exhaust sound pressure levels against a general noise limit for categories of road vehicles.

Technical background information is given in Annex A.

## 2 Normative references

The following referenced documents are indispensable for the application of this document. For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

ISO 5725 (all parts), *Accuracy (trueness and precision) of measurement methods and results*

IEC 60942, *Electroacoustics — Sound calibrators*

IEC 61672-1, *Electroacoustics — Sound level meters — Part 1: Specifications*

ISO Guide 98, *Guide to the expression of uncertainty in measurement (GUM)*

### 3 Terms and definitions

For the purposes of this document, the following terms and definitions apply.

#### 3.1 vehicle category L

motor vehicles with fewer than four wheels

NOTE United Nations Economic Commission for Europe (UN ECE) document TRANS/WP.29/78/Rev.1/Amend.4 (26 April 2005) extended the L category to four-wheeled vehicles as defined by L6 and L7 in ISO 362-1:—, 3.4.1.5 and 3.4.1.6.

#### 3.2 vehicle category M

power-driven vehicles having at least four wheels and used for the carriage of passengers

#### 3.3 vehicle category N

power-driven vehicles having at least four wheels and used for the carriage of goods

#### 3.4 rated engine speed

*S*

engine speed at which the engine develops its rated maximum net power as stated by the manufacturer

NOTE 1 If the rated maximum net power is reached at several engine speeds, the *S* used in this International Standard is the highest engine speed at which the rated maximum net power is reached.

NOTE 2 ISO 80000-2 defines this term as “rated engine rotational frequency”. The term “rated engine speed” was retained due to its common understanding by practitioners and use in government regulations.

### 4 Instrumentation

#### 4.1 Instrumentation for acoustical measurement

##### 4.1.1 General

The sound level meter or equivalent measuring system, including the windscreen recommended by the manufacturer, shall meet the requirements of class 1 instruments, in accordance with IEC 61672-1.

The measurements shall be made using the frequency-weighting A, and the time-weighting F.

##### 4.1.2 Calibration

At the beginning and at the end of every measurement session, the entire measuring system shall be checked by means of a sound calibrator that fulfils the requirements for sound calibrators of class 1 in accordance with IEC 60942. Without any further adjustment, the difference between the readings of two consecutive checks shall be less than or equal to 0,5 dB. If this value is exceeded, the results of the measurements obtained after the previous satisfactory check shall be discarded.

##### 4.1.3 Compliance with requirements

Compliance of the instrumentation system with the requirements of IEC 61672-1 and compliance of the sound calibration device with the requirements of IEC 60942 shall be verified by the existence of a valid certificate of compliance. These certificates shall be deemed to be valid if verification of compliance with the respective standards was conducted within the previous 24 months for the instrumentation system and 12 months for the sound calibration device. All compliance testing shall be conducted by a laboratory that is authorized to perform calibrations traceable to the appropriate standards.

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## 4.2 Instrumentation for engine-speed measurement

The rotational speed of the engine shall be measured with an instrument meeting the specification limits of at least  $\pm 2\%$  or better at the engine speeds required for the measurements being performed.

## 5 Acoustical environment, meteorological conditions and background noise

### 5.1 Test site

A suitable test site shall be outdoors and consist of a level concrete, dense asphalt or similar hard material flat surface, free from snow, grass, loose soil, ashes or other sound-absorbing material. It shall be in an open space free from large reflecting surfaces, such as parked vehicles, buildings, billboards, trees, shrubbery, parallel walls, people, etc., within a 3 m radius from the microphone location and any point of the vehicle.

As an alternative to outdoor testing, a semi-anechoic chamber may be used. The semi-anechoic chamber shall fulfill the acoustical requirements given above. These requirements shall be met if the testing facility meets the 3 m distance criteria above and has a cut-off frequency below the lower of

- one-third-octave band below the lowest fundamental frequency of the engine during test;
- 100 Hz.

**NOTE** The noise performance of indoor testing facilities is specified in terms of the cut-off frequency (Hz). This is the frequency above which the room can be assumed to act as a semi-anechoic space.

### 5.2 Meteorological conditions

The tests shall not be carried out if the wind speed, including gusts, exceeds 5 m/s during the sound-measurement interval.

### 5.3 Background noise

Readings on the measuring instruments produced by ambient noise and wind shall be at least 10 dB below the A-weighted sound pressure level to be measured. A suitable windscreen may be fitted to the microphone, provided that account is taken of its effect on the sensitivity of the sound level meter.

## 6 Test procedure

### 6.1 General comments

It is essential that persons technically trained and experienced in current sound measurement techniques select the test instrumentation and conduct the test.

It should be recognized that variations in measured sound pressure levels can occur due to variations in test sites, atmospheric conditions and test equipment; see Annex B.

Instrument manufacturers' specification for orientation of the microphone relative to the sound source and the location of the observer relative to the microphone shall be followed. The test may be performed with a hand-held sound level meter. However, the sound level meter or microphone should be mounted on a stand or fixture for stability; see Clause 9. When possible, a microphone extension cable should be used and measurement or recording devices should be located away from the microphone.

**CAUTION — Caution should be exercised when measuring rear- and mid-engine vehicles because engine and cooling-fan noise can prevent accurate measurement of exhaust noise.**

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## 6.2 Positioning and preparation of the vehicle

The vehicle transmission shall be in neutral position and the clutch engaged, or in parking position for automatic transmission, and the parking brake applied for safety.

The vehicle air conditioner, if equipped, shall be turned off.

If the vehicle is fitted with fan(s) having an automatic actuating mechanism, this system shall not be interfered with during the sound pressure level measurements.

The engine hood or compartment cover shall be closed.

Before each series of measurements, the engine shall be brought to its normal operating temperature, as specified by the manufacturer.

In case of a two-wheeled motor-driven vehicle having no neutral gear position, measurements shall be carried out with the rear wheel raised off the ground so that the wheel can rotate freely.

If it is necessary to raise a two-wheeled vehicle off the ground to perform the test, the microphone measurement position shall be adjusted to achieve the specified distance from the reference point of the exhaust pipe; see Figure 1 for the location of the reference points.

## 6.3 Microphone position

The microphone shall be located at a distance of  $0,5 \text{ m} \pm 0,01 \text{ m}$  from the reference point of the exhaust pipe defined in Figure 1 and at an angle of  $45^\circ \pm 5^\circ$  to the vertical plane containing the flow axis of the pipe termination. The microphone shall be at the height of the reference point, but not less than 0,2 m from the ground surface. The reference axis of the microphone shall lie in a plane parallel to the ground surface and shall be directed towards the reference point on the exhaust outlet.

If two microphone positions are possible, the location farthest laterally from the vehicle longitudinal centreline shall be used.

If the flow axis of the exhaust outlet pipe is at  $90^\circ$  to the vehicle longitudinal centreline, the microphone shall be located at the point that is the furthest from the engine.

If a vehicle has two or more exhaust outlets spaced less than 0,3 m apart and connected to a single silencer, only one measurement shall be made. The microphone shall be located relative to the outlet the farthest from the vehicle's longitudinal centreline, or, when such outlet does not exist, to the outlet that is highest above the ground.

For vehicles having an exhaust provided with outlets spaced more than 0,3 m apart or more than one silencer, one measurement shall be made for each outlet as if it were the only one, and the highest sound pressure level shall be noted.

For vehicles with a vertical exhaust (e.g. commercial vehicles), the microphone shall be placed at the height of the exhaust outlet. Its axis shall be vertical and oriented upwards. It shall be placed at a distance of  $0,5 \text{ m} \pm 0,01 \text{ m}$  from the exhaust-pipe reference point as defined in Figure 1, but never less than 0,2 m from the side of the vehicle nearest to the exhaust.

For vehicles for which the reference point of the exhaust pipe is not accessible or located under the vehicle body, as shown in Figures 2 c) and 2 d), because of the presence of obstacles that form part of the vehicle (e.g. spare wheel, fuel tank, battery compartment), the microphone shall be located at least 0,2 m from the nearest obstacle, including the vehicle body, and its axis of maximum sensitivity shall face the exhaust outlet from the position least concealed by the above-mentioned obstacles.

When several positions are possible, as shown in Figure 2 d), the microphone position giving the lowest value of  $d_1$  or  $d_2$  shall be used.

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Figures 2 a) to 2 e) show examples of the position of the microphone, depending on the location of the exhaust pipe.

For the purpose of roadside checking, the reference point may be moved to the outer surface of the vehicle body.

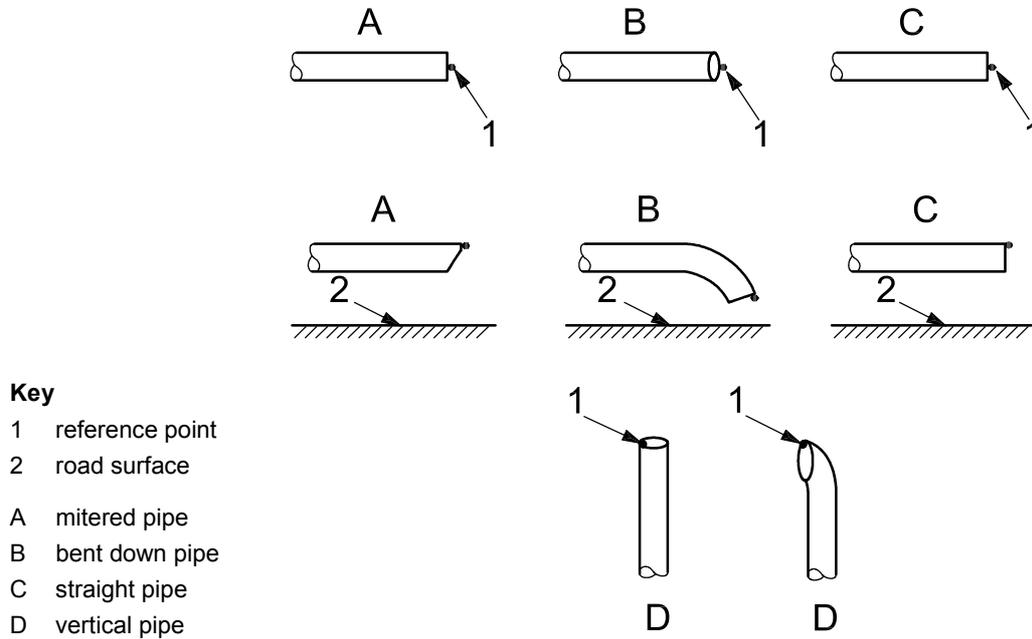
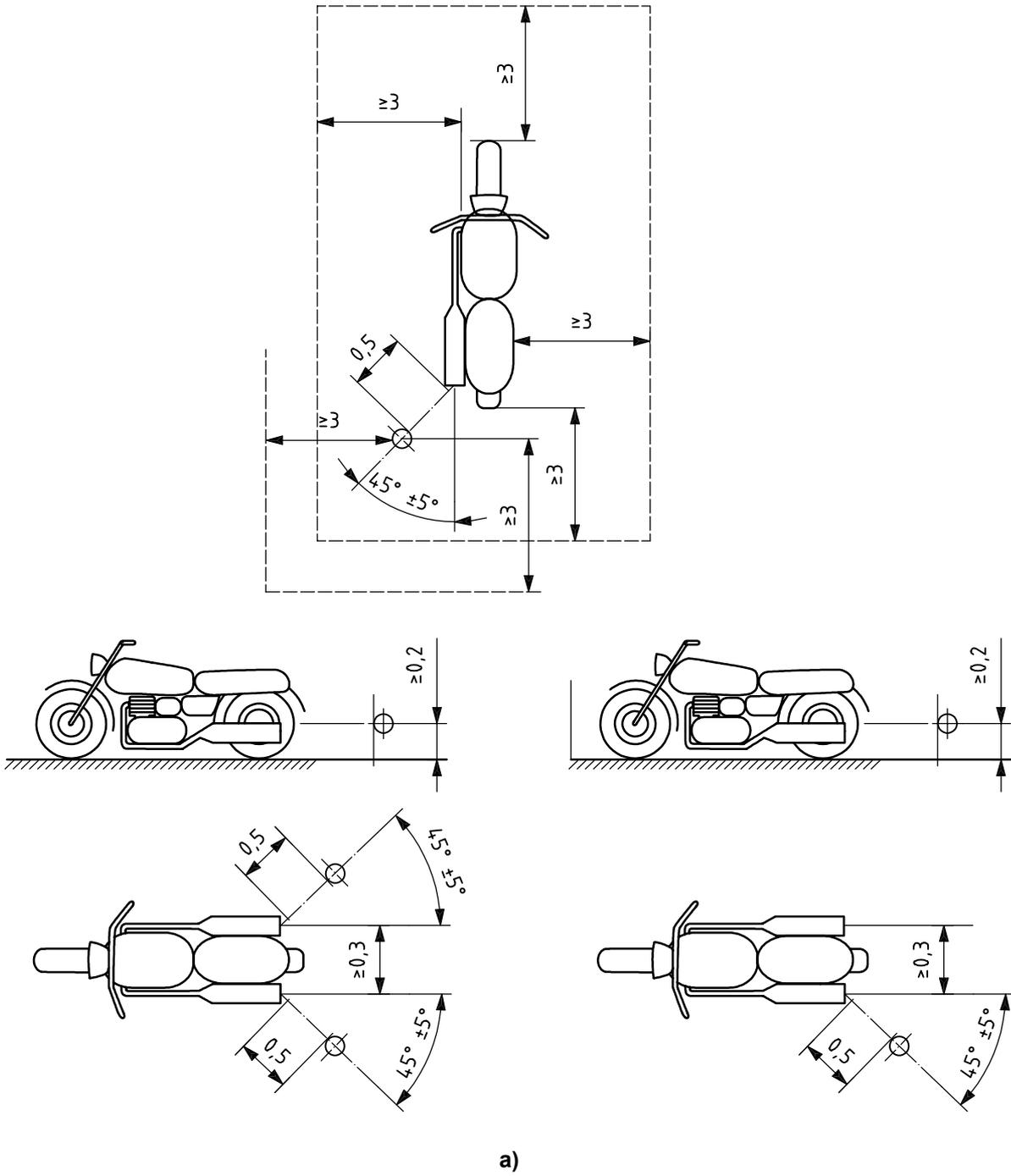
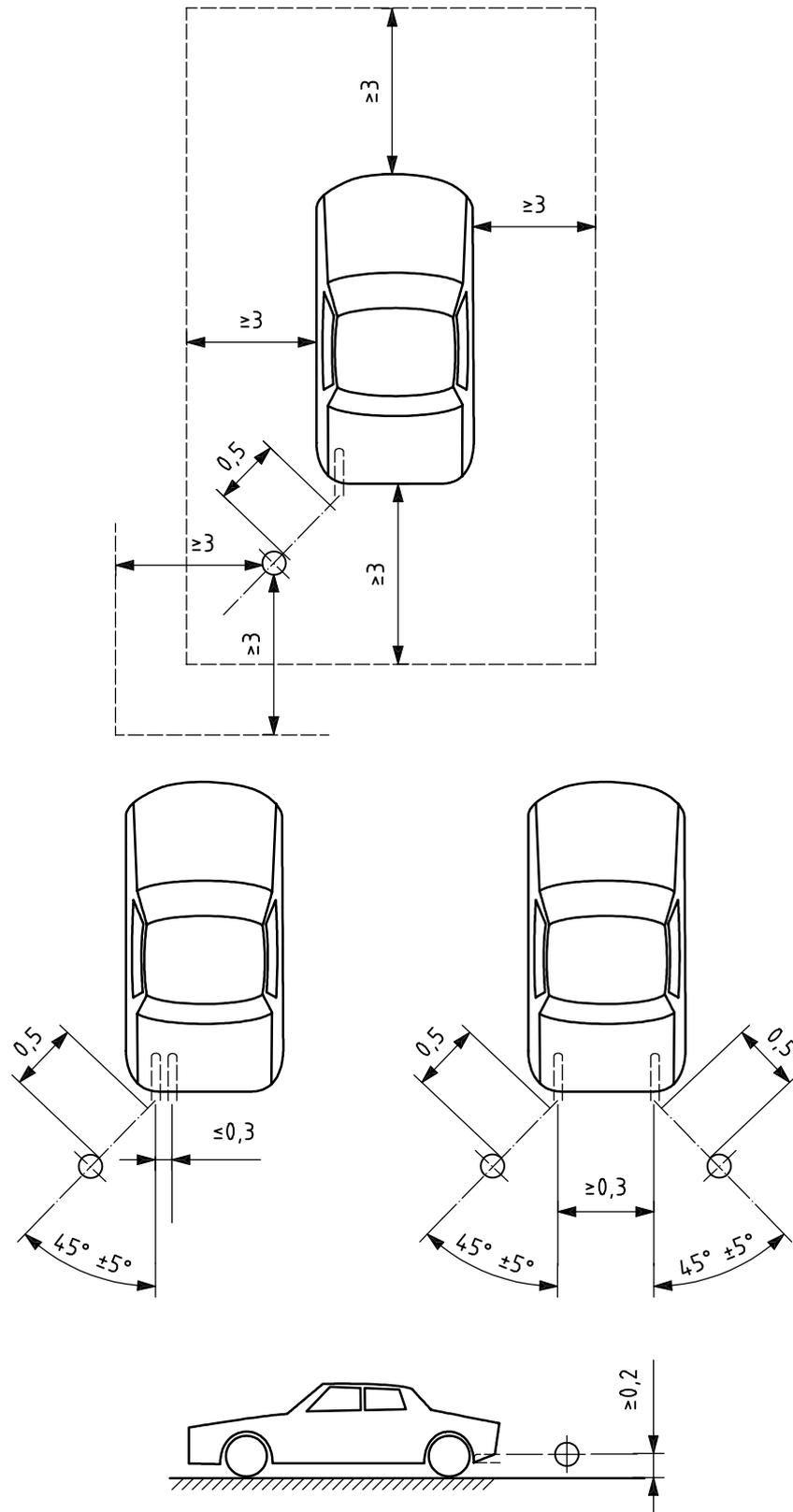


Figure 1 — Reference point

Dimensions in metres, unless otherwise indicated



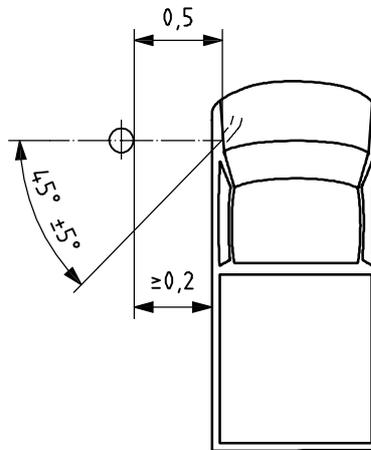
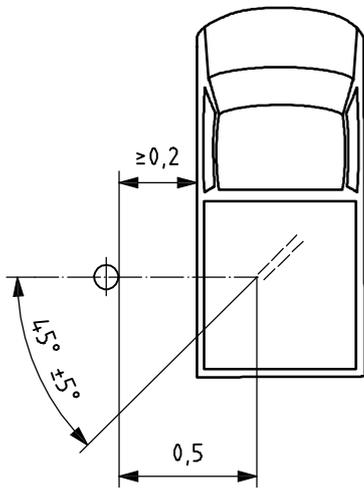
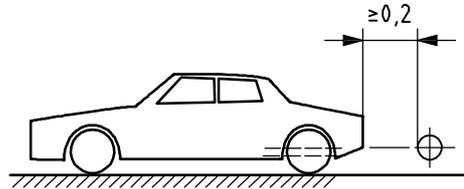
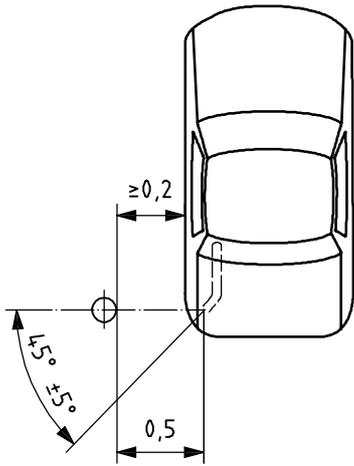
Dimensions in metres, unless otherwise indicated



b)

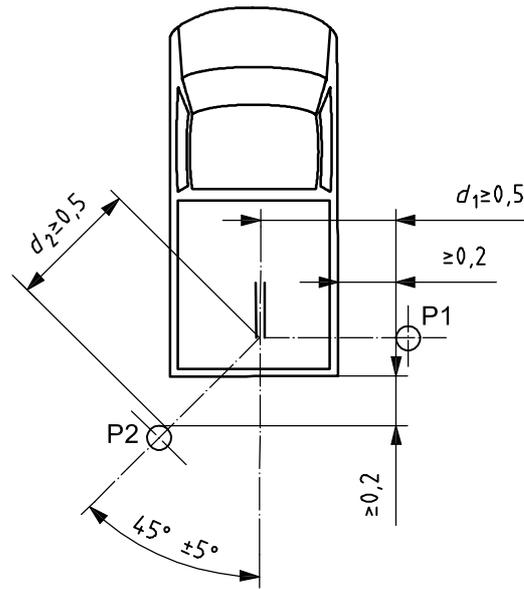
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Dimensions in metres, unless otherwise indicated



c)

Dimensions in metres, unless otherwise indicated

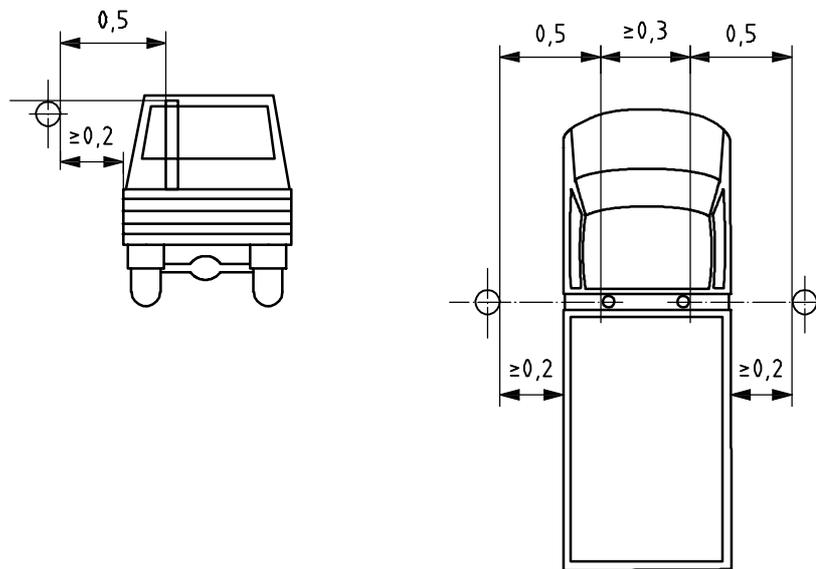


P1, P2 microphone positions 1 and 2, respectively

$d_1, d_2$  distances from the exhaust pipe to P1 and P2, respectively

d)

Dimensions in metres



e)

Figure 2 — Examples of microphone positions for various exhaust locations

## 6.4 Target engine speed

### 6.4.1 General

If the vehicle cannot reach the engine speed as stated in 6.4.2 and 6.4.3, the target engine speed shall be 5 % below the maximum possible engine speed for the stationary test.

### 6.4.2 Vehicles of category L

The target engine speed shall be

- 75 % of the rated engine speed,  $S$ , for vehicles with  $S \leq 5\,000 \text{ min}^{-1}$ ,
- 50 % of the rated engine speed,  $S$ , for vehicles with  $S > 5\,000 \text{ min}^{-1}$ ,

with a tolerance of  $\pm 5\%$ .

### 6.4.3 Vehicles of category M, N

The target engine speed shall be:

- 75 % of the rated engine speed,  $S$ , for vehicles with  $S \leq 5\,000 \text{ min}^{-1}$ ,
- $3\,750 \text{ min}^{-1}$  for vehicles with a rated engine speed  $5\,000 < S < 7\,500 \text{ min}^{-1}$ ,
- 50 % of the rated engine speed,  $S$ , for vehicles with  $S \geq 7\,500 \text{ min}^{-1}$ ,

with a tolerance of  $\pm 5\%$ .

## 6.5 Engine operating conditions

The engine speed shall be gradually increased from idle to the target engine speed, not exceeding the tolerance band as given in 6.4.2 and or 6.4.3 and held constant. Then the throttle control shall be rapidly released and the engine speed shall be returned to idle. The sound pressure level shall be measured during a period consisting of constant engine speed of at least 1 s and throughout the entire deceleration period. The maximum sound level meter reading shall be taken as the test value.

The measurement shall be regarded as valid if the test engine speed does not deviate from the target engine speed by more than the tolerances given in 6.4.2 and 6.4.3, for at least 1 s.

## 6.6 Multi-mode exhaust system

Vehicles equipped with a multi-mode exhaust system and a manual exhaust mode control shall be tested with the mode switch in all positions.

## 7 Measurements

Measurements shall be made according to the microphone location(s) described in 6.3.

The maximum A-weighted sound pressure level indicated during the test shall be noted, mathematically rounded to the first significant figure before the decimal place (e.g. 92,4 shall be rounded to 92 while 92,5 shall be rounded to 93).

The test shall be repeated until three consecutive measurements that are within 2 dB of each other are obtained at each outlet.

The result for a given outlet is the arithmetic average of the three valid measurements, mathematically rounded as given above and shall be reported as the A-weighted sound pressure level,  $L_{Arep}$ , as given by Equation (1):

$$L_{Arep} = (L_{Ameas,1} + L_{Ameas,2} + L_{Ameas,3})/3 \quad (1)$$

For vehicles equipped with multiple exhaust outlets, the sound pressure level reported  $L_{Arep}$  shall be for the outlet having the highest average sound pressure level.

## 8 Interpretation of results

The result of testing a vehicle in use may be interpreted by comparison with the results of the reference test in which the vehicle was tested using the same method, for instance during type approval.

## 9 Measurement uncertainty

The measurement procedure described in the preceding clauses is affected by several parameters that lead to variation in the resulting level observed for the same subject. The source and nature of these perturbations are not completely known and sometimes affect the end result in a non-predictable way. The uncertainty of results obtained from measurements according to this International Standard can be evaluated by the procedure given in the ISO Guide 98 (formerly designated "GUM"), or by inter-laboratory comparisons in accordance with ISO 5725 (all parts). Since extensive inter- and intra-laboratory data are not yet available, the procedure given in the ISO Guide 98 was followed to estimate the uncertainty associated with this International Standard. The uncertainties given below are based on existing statistical data, analysis of tolerances stated in this International Standard and engineering judgment. The uncertainties so determined are grouped as follows:

- variations expected within the same test laboratory and slight variations in ambient conditions found within a single test series (run-to-run);
- variations expected within the same test laboratory but with a variation in ambient conditions and equipment properties that can normally be expected during the year (day-to-day);
- variations between test-laboratories where, apart from ambient conditions, also equipment, staff and road surface conditions are different (site-to-site).

If reported, the expanded uncertainty, together with the corresponding coverage factor for the stated coverage probability of 80 % as defined in the ISO Guide 98, shall be given. Information on the determination of the expanded uncertainty is given in Annex B.

NOTE Annex B gives a framework for an analysis based on ISO Guide 98 that can be used to conduct future research on measurement uncertainty for this International Standard.

These data are given in Table 1. The variability is given for a coverage probability of 80 %. The data express the variability of results for a certain measurement object and do not cover product variation.

**Table 1 — Variability of measurement results for a coverage probability of 80 %**

Run-to-run	Day-to-day	Site-to-site
dB	dB	dB
0,8	1,2	1,9

Until more specific knowledge is available, the data for site-to-site variability can be used in test reports to state the expanded measurement uncertainty for a coverage probability of 80 %.

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Due to the uncertainty influence, differences between the sound pressure level of the vehicle in-use and that in corresponding reference tests should not be considered significant unless they are equal to or larger than 5 dB.

The variations in the sound pressure level of identical units of a production process are outside the scope of this International Standard. Such variation is within the scope of the quality control systems of the manufacturer.

## **10 Test report**

The test report shall include the following information:

- a) statement that the test was in accordance with ISO 5130;
- b) test site, ground conditions, and weather conditions;
- c) type of measuring equipment, including the windscreen;
- d) A-weighted sound pressure level typical of the background noise;
- e) identification of the vehicle, its engine and its transmission system;
- f) general description of the location of the engine and exhaust outlet;
- g) location and orientation of the microphone;
- h) engine operating speed used for the test;
- i) A-weighted sound pressure level,  $L_{Arep}$ , determined by the test.

## Annex A (informative)

### Technical background information

There are several technical reasons to revise ISO 5130:1982, dealing with the stationary test method developed in the late 1970s. Since the last revision of this procedure, there has been continuous development of vehicle technology, including the reduction of exhaust noise, and the design of vehicle exhaust systems.

The original scope of the procedure was to provide a simple method for use in roadside checks of exhaust systems, e.g. by the police or road authorities.

In some countries/regions, a general noise limit for different categories of vehicles has been introduced and control is performed to check for faults in the exhaust system. This application of the procedure causes inaccuracies for vehicles with rear- or mid-engine, as the engine noise can be the dominating noise source, thereby interfering with the intent of the measurement. In such cases, flexible shields are necessary to separate the different noise sources during the test, adding complexity and measurement variability.

Investigations have shown that the present method is not particularly suited to check the exhaust system against a general noise limit, because of the influence of other vehicle-noise sources at the position of the microphone. The extent to which other noise sources can contribute to the stationary measurement is vehicle-design dependent. These investigations also show that the noise close to the exhaust pipe is very much dependent on engine speed and can vary as much as 20 dB over a typical range of operating engine speeds. Because a vehicle exhaust system is an acoustic-tuning element, levels of noise do not necessarily increase in a linear fashion with increasing engine speed. Thus, it seems prudent to revise ISO 5130:1982, in order to more clearly define its scope and enhance the accuracy of the measurement method.

In several countries, for example the Member States of the European Union and Norway, a system has been introduced such that the stationary level of noise (measured during type approval or when imported as a used vehicle) is labelled in the vehicle-registration documents, which are kept with the vehicle. This concept provides a more efficient basis for spot checks of the performance of vehicles using a stationary test. Comparison of results of the level of noise obtained from a roadside, or periodic technical inspection, to the baseline level of noise obtained during type approval gives a more accurate measure of the performance of any given vehicle. It is recommended that this method be added to the scope of this procedure to improve the validity of its application.

ISO 5130:1982 contained an annex describing a close-proximity method for the measurement of stationary engine noise. This annex has been deleted, as there seems no need for such a method.

## Annex B (informative)

### Measurement uncertainty — Framework for uncertainty analysis based on ISO Guide 98

#### B.1 General

The measurement procedure is affected by several disturbing factors that lead to variations in the resulting level observed for the same subject. The source and nature of these perturbations are not completely known and sometimes affect the end result in a non-predictable way. The accepted format for expression of uncertainties generally associated with methods of measurement is that given in the ISO Guide 98. This format incorporates an uncertainty budget, in which all the various sources of uncertainty are identified and quantified, from which the combined standard uncertainty can be obtained. Uncertainties are due to

- variations in measurement devices, such as sound level meters, calibrators and engine speed measuring devices;
- variations in local environmental conditions that affect sound propagation at the time of measurement;
- variations in local environmental conditions that affect the characteristics of the source;
- effect of environmental conditions that influence the mechanical characteristics of the source, mainly engine performance (air pressure, air density, humidity, air temperature);
- test-site properties.

The uncertainty determined in accordance with Clause 9 represents the uncertainty associated with this International Standard. It does not cover the uncertainty associated with the variation in the production processes of the manufacturer. The variations in the exhaust sound pressure level of identical units of a production process are outside the scope of this International Standard.

The uncertainty effects may be grouped in the three categories arising from the following sources; see Clause 9:

- a) uncertainty due to changes in vehicle operation within consecutive runs, small changes in weather conditions, small changes in background noise levels and measurement system uncertainty; referred to as run-to-run variations;
- b) uncertainty due to changes in weather conditions throughout the year, changing properties of a test site over time, changes in measurement-system performance over longer periods and changes in the vehicle operation; referred to as day-to-day variations;
- c) uncertainty due to different test-site locations, measurement systems and vehicle operation; referred to as site-to-site variations.

The site-to-site variation comprises uncertainty sources from a), b) and c). The day-to-day variation comprises uncertainty sources from a) and b).

## B.2 Expression for the calculation of vehicle stationary exhaust operation sound pressure level

The general expression for the calculation of stationary exhaust sound pressure level,  $L_{Arep}$ , is given by Equation (B.1):

$$L_{Arep} = (L_{Ameas,1} + L_{Ameas,2} + L_{Ameas,3})/3 + \delta_1 + \delta_2 + \delta_3 + \delta_4 + \delta_5 + \delta_6 \quad (B.1)$$

where

- $L_{Arep}$  is the reported A-weighted sound pressure level;
- $L_{Ameas,i}$  is the A-weighted sound pressure level from each individual test,  $i$ ;
- $\delta_1$  is an input quantity to allow for any uncertainty in the measurement system;
- $\delta_2$  is an input quantity to allow for any uncertainty in the environmental conditions that affect sound propagation from the source the time of measurement;
- $\delta_3$  is an input quantity to allow for any uncertainty in the engine speed;
- $\delta_4$  is an input quantity to allow for any uncertainty in the local environmental conditions that affect characteristics of the source;
- $\delta_5$  is an input quantity to allow for any uncertainty in the effect of environmental conditions on the mechanical characteristics of the power unit;
- $\delta_6$  is an input quantity to allow for any uncertainty in the effect of test site properties.

NOTE The inputs included in Equation (B.1) to allow for errors are those thought to be applicable in the state of knowledge at the time when this International Standard was being prepared, but further research can reveal that there are others.

## B.3 Uncertainty budget

The estimated values of the delta functions can be principally positive or negative, although they are considered to be zero for the given measurement; see Table B.1. Their uncertainties are not additive for the purpose of determining a measurement result.

Table B.1 — Uncertainty budget for determination of reported sound pressure level

Quantity	Estimate	Standard uncertainty $u_i$	Probability distribution	Sensitivity coefficient $c_i$	Uncertainty contribution $u_i c_i$
	dB	dB			dB
$L_{Ameas,i}$	$L_{Ameas,i}$	—	—	1	—
$\delta_1$	0	—	—	1	—
$\delta_2$	0	—	—	1	—
$\delta_3$	0	—	—	1	—
$\delta_4$	0	—	—	1	—
$\delta_5$	0	—	—	1	—
$\delta_6$	0	—	—	1	—

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From the individual uncertainty contributions,  $u_i c_i$ , the combined standard uncertainty,  $u$ , can be calculated according to the rules of ISO Guide 98, taking into account potential correlations between various input quantities.

NOTE The uncertainty evaluation described represents a framework that provides useful information to users of this International Standard. This information represents the state of technical information at this time. Further work is necessary to provide uncertainty information on all terms in Equation (B.1) and all interactions between such terms.

#### **B.4 Expanded uncertainty of measurement**

The expanded uncertainty,  $U$ , is calculated by multiplying the combined standard uncertainty,  $u$ , with the appropriate coverage factor for the chosen coverage probability, as described in ISO Guide 98.

## Bibliography

- [1] ISO 362-1:—, *Measurement of noise emitted by accelerating road vehicles — Engineering method — Part 1: M and N categories*
- [2] SAE J1492:1998-05, *Measurement of Light Vehicle Stationary Exhaust System Sound Level Engine Speed Sweep Method*
- [3] SAE J1287:1998-07, *Measurement of Exhaust Sound Levels of Stationary Motorcycles*
- [4] ISO 80000-2<sup>1)</sup>, *Quantities and units — Part 2: Mathematical signs and symbols to be used in the natural sciences and technology*

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1) Under preparation.





400 Commonwealth Drive, Warrendale, PA 15096-0001

# SURFACE VEHICLE STANDARD

An American National Standard

SAE J1287

REAF.  
JUL1998

Issued	1980-06
Reaffirmed	1998-07

Superseding J1287 JUN93

## Measurement of Exhaust Sound Levels of Stationary Motorcycles

**Foreword**—This Reaffirmed Document has been changed only to comply with the new SAE Technical Standards Board Format. The Definitions Section has changed to Section 3. All other section numbers have been changed accordingly.

**1. Scope**—This SAE Standard establishes the test procedure, environment, and instrumentation for determining the sound levels of motorcycles under stationary conditions. This test will measure primarily exhaust noise and does not represent the optimum procedure for evaluating total vehicle noise. For this purpose, SAE J331 or SAE J47 is recommended.

### 2. References

**2.1 Applicable Publications**—The following publications form a part of this specification to the extent specified herein. Unless otherwise indicated, the latest issue of SAE publications shall apply.

2.1.1 SAE PUBLICATIONS—Available from SAE, 400 Commonwealth Drive, Warrendale, PA 15096-0001.

SAE J47—Maximum Sound Level Potential for Motorcycles  
 SAE J184—Qualifying a Sound Data Acquisition System  
 SAE J213—Definitions—Motorcycles  
 SAE J331—Sound Levels for Motorcycles  
 SAE J1349—Engine Power Test Code—Spark Ignition and Diesel  
 SAE TSB 002 JUN86—Preparation of SAE Technical Reports

2.1.2 ANSI PUBLICATION—Available from ANSI, 11 West 42nd Street, New York, NY 10036-8002.

ANSI S1.4-1983—Specification for Sound Level Meters

### 3. Definitions

**3.1 Field Calibration**—Calibration of the sound level meter using an external sound level calibrator, an internal calibration means, or any other method which will ensure the accuracy of sound level meter readings.

**3.2 Longitudinal Plane Of Symmetry**—As defined in SAE J213.

**3.3 Rated Engine Speed**—The engine speed in revolutions per minute at which the engine delivers its maximum Net Brake Power as defined in SAE J1349, as determined by the manufacturer.

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**4. Instrumentation**—The following instrumentation shall be used:

- 4.1** A sound level meter meeting the Type 1, Type S1A, Type 2, or Type S2A requirements of ANSI S1.4-1983.
- 4.1.1** As an alternative to making direct measurements using a sound level meter, a microphone or sound level meter may be used with a magnetic tape recorder and/or a graphic level recorder or other indicating instrument, provided the system meets the requirements of SAE J184.
- 4.2** A sound level calibrator with an accuracy of  $\pm 0.5$  dB (see 7.9).
- 4.3** A windscreen which does not affect microphone response more than  $\pm 1$  dB for frequencies of 63 to 4000 Hz and  $\pm 1.5$  dB for frequencies of 4000 to 10 000 Hz.
- 4.4** An engine speed tachometer or other means of determining engine speed, with a steady-state accuracy of  $\pm 3\%$  at the test speed.
- 4.5** An anemometer with steady-state accuracy of  $\pm 10\%$  at 9 m/s (20 mph).

**5. Test Site**

- 5.1** The test site shall be a flat, open surface free of large sound-reflecting surfaces (other than the ground) such as parked vehicles, signboards, buildings, or hillsides located within 5 m (16 ft) of the motorcycle being tested and the location of the microphone.
- 5.2** The surface of the ground within the area described in 5.1 shall be paving or hard-packed earth, level within an average slope of 40 mm/m (0.5 in/ft), and shall be free of loose or powdered snow, plowed soil, grass of a height greater than 150 mm (6 in), trees, or other extraneous material.

**6. Procedure**

- 6.1** A rider shall sit astride the motorcycle in normal riding position with both feet on the ground. If this is not possible because of the seat height of the motorcycle, and for three-wheeled motorcycles, the rider shall sit in the normal riding position with one or both feet on the footrests. If necessary, an assistant may hold the motorcycle by the forks, front wheel, or handlebars so that it is stationary with its longitudinal plane of symmetry vertical. In the alternative, the rider may use a box, rock, or other object to rest his feet upon to steady the motorcycle, as long as the motorcycle longitudinal plane of symmetry is vertical and stationary.

The rider shall run the engine with the gearbox in neutral at a speed equal to one-half of the rated engine speed.

- 6.1.1** If no neutral is provided, the motorcycle shall be operated either with the rear wheel(s) at least 50 mm (2 in) clear of the ground or with the drive chain or belt removed, or with the clutch, if the motorcycle is so equipped, disengaged.
- 6.2** The engine of the motorcycle under test shall be at normal operating temperature during the test.

**7. Measurements**

- 7.1** The sound level meter shall be set for the A-weighting network and should be set for slow dynamic response. (See Appendix A, Section A.5.)
- 7.2** Tests shall be made on each side of the motorcycle having an exhaust outlet.

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- 7.3** The microphone shall be located behind,  $0.5\text{ m} \pm 0.01\text{ m}$  ( $20\text{ in} \pm 1/2\text{ in}$ ) from, and within  $0.01\text{ m}$  ( $1/2\text{ in}$ ) of the same height as the exhaust outlet and at a  $45\text{ degrees} \pm 10\text{ degrees}$  angle to the normal line of travel of the motorcycle. If there is more than one exhaust outlet per side, the microphone shall be located with reference to the rearmost outlet.

The longitudinal axis of the microphone shall be in a plane parallel to the ground plane. The axis of the microphone shall be oriented as specified for free field response by the manufacturer (see Figure 1).

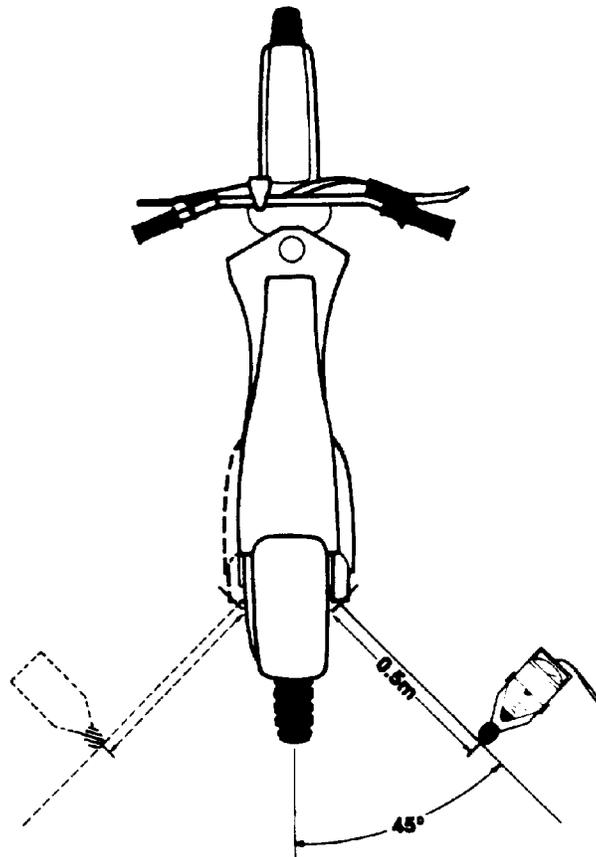


FIGURE 1—SOUND LEVEL AND MICROPHONE LOCATION AND ORIENTATION

- 7.4** No wire or other rigid means of distance measurement shall be attached to the sound measuring system.
- 7.5** The sound level recorded shall be that measured during steady-state operation at the engine speed ( $\pm 200\text{ rpm}$ ) determined in Section 6 measured on the loudest side of the motorcycle (if outlet located on both sides — see 7.2). The test speed in rpm shall also be recorded.
- 7.6** The ambient sound level (including wind effects) at the test site due to sources other than the motorcycle being measured shall be at least 10 dB lower than the sound level produced by the motorcycle under test.
- 7.7** Wind speed at the test site during the test shall be less than 9 m/s (20 mph).

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- 7.8** While making sound level measurements, not more than one person other than the rider, the measurer, and the assistant (if necessary) (see 6.1) shall be within 3 m (10 ft) of the motorcycle under test or the microphone, and that person shall be directly behind the measurer on a line through the microphone and the measurer.
- 7.9** Calibration of the sound level meter using the sound level calibrator (see 4.2) shall be made immediately before the first test of each test day and should be made at the end of each test day. Field calibration should be made at intervals of no more than 1 h.
- 8. General Comments**
- 8.1** It is essential that persons conducting the test be knowledgeable of the test procedure and use of the instrumentation.
- 8.2** Proper use of all test instruments is essential to obtain valid measurements. Operating manuals or other literature furnished by the instrument manufacturer should be referred to, for both recommended operation of the instrument and precautions to be observed.
- 8.3 Specific Items for Consideration**
- 8.3.1 The type of microphone, its directional response characteristics, and its orientation relative to the source of sound.
- 8.3.2 The effects of ambient weather conditions on the performance of all instruments (that is, temperature, humidity, and barometric pressure).
- 8.3.3 Proper acoustical calibration procedure to include the influence of extension cables, etc.
- 8.4** Although either Type 1 or Type 2 sound level meters may be used with this procedure, it is suggested that a Type 1 instrument be considered as it generally has lesser overall tolerance which can result in more accurate measurements.
- 8.5** The use of the word "shall" in the procedure is to be understood as obligatory. The use of the word "should" is to be understood as advisory. The use of the word "may" is to be understood as permissive.

PREPARED BY THE SAE MOTORCYCLE COMMITTEE

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## APPENDIX A

This procedure can be adapted to a variety of uses, which may include exhaust system certification, enforcement of in-use motorcycle standards, and use by motorcycle competition bodies to ensure some silencing of race vehicles. As provided in TSB 002, this Appendix adds supplementary engineering reference data and educational material and is not an integral part of the basic technical report. Accordingly, a description of the variations used shall be reported along with test results obtained using the variations provided in this Appendix. Such results shall not be reported as having been obtained according to the standard conditions of this document. Some of these uses may require less precision than is called for in the procedure. Accordingly, the following changes may be made for convenience with the realization that accuracy may suffer.

**A.1 Enforcement Testing**—When used for enforcement, this procedure is intended to be a pass-fail test. A  $\pm 1.5$  dB variation due to changes in test conditions, motorcycles, and instruments can occur. Test to test variations within this limit shall be considered acceptable. If limits are to be set according to this procedure, these variations should be considered when limits are chosen.

In enforcement situations, it is often easier to use one-half of the redline speed (redline speed is the lowest numerical engine speed included in the red zone on the motorcycle tachometer) rather than the test speed specified in 6.1. One-half of redline speed is a higher test speed than one-half of rated rpm; thus, the measured sound level will be higher, and a 3 dB tolerance must be added to the applicable sound level limit.

While site tolerances may be relaxed somewhat without serious degradation of precision in the method, site parameters, as described in Section 5, should be as closely adhered to as possible. It is unlikely that useful results will be obtained if, for instance, any other motorcycle or other vehicle or person is within 6 ft of the test motorcycle, or if the motorcycle is tested while it is loaded in a pickup truck or on a trailer.

**A.2 Instrumentation**—Type 1 instrumentation, which generally can provide the most accurate measurements, should be used when the need for accuracy is great, such as certification of exhaust systems, or enforcement action which may result in some form of penalty.

Type 2 instrumentation could be appropriate for some enforcement work, such as a preliminary screening test, or for general data gathering. On the other hand, instrumentation which is less precise than Type 1 or Type 2 may be appropriate in cases such as at a racetrack or motorcycle park, when the primary interest is securing some noise reduction from the motorcycles operated within, and not measuring for the purpose of meeting specific maximum noise limits. Selection of equipment should reflect the need for accuracy (particularly considering any consequences) balanced against cost. Caution should be exercised, however, when selecting equipment which does not conform with ANSI standards. Experience with consumer electronic types of sound level meters indicates most such meters do not possess operating characteristics of sufficient accuracy or consistency to yield meaningful results. Meters which meet obsolete ANSI S1.4 Type 3 specifications, however, are sufficiently accurate for less demanding applications such as racetrack enforcement.

**A.3 Procedure**—When making comparison measurements where a single variable is to be evaluated, such as comparing the sound level of two different exhaust systems on the same vehicle, selection of the correct engine speed according to 6.1 is not critical as long as the same engine speed is used for each test.

**A.4 Racing Motorcycles**—This procedure may be used for sound testing of racing motorcycles. An appropriate test speed for both four-stroke and two-stroke high-performance competition motorcycles for which the rated engine speed is not known is determined from Equation A1:

$$\text{Test Speed} = \frac{306\,000}{\text{stroke in millimeters}} \text{ or } \left( \frac{12\,000}{\text{stroke in inches}} \right) \quad (\text{Eq. A1})$$

## SAE J1287 Reaffirmed JUL1998

**A.5 Dynamic Response**—Use of slow dynamic response is specified, but fast dynamic response may be used. Because of the essentially constant nature of the sound level, either mode is acceptable; the meter is easier to read when slow response is used.

**A.6 Wind Speed**—If it is not possible to delay testing until the specified wind conditions prevail, testing can be performed in higher winds. In this case, the motorcycle should be positioned so that the prevailing wind direction is parallel to the normal direction of travel of the motorcycle.

**A.7 Alternate Engine Speed**—If the rated engine speed for a particular motorcycle is unknown, then the test speed shall be calculated from either Equations A2 or A3:

$$\text{For four-stroke engines} = \frac{250\,000}{\text{stroke in millimeters}} \text{ or } \left( \frac{9800}{\text{stroke in inches}} \right) \quad (\text{Eq. A2})$$

$$\text{For two-stroke engines: } \frac{200\,000}{\text{stroke in millimeters}} \text{ or } \left( \frac{7900}{\text{stroke in inches}} \right) \quad (\text{Eq. A3})$$

## **SAE J1287 Reaffirmed JUL1998**

**Rationale**—This Reaffirmed Document has been changed only to comply with the new SAE Technical Standards Board Format. Definitions have changed to Section 3. All other section numbers have been changed.

**Relationship of SAE Standard to ISO Standard**—Not applicable.

**Application**—This SAE Standard establishes the test procedure, environment, and instrumentation for determining the sound levels of motorcycles under stationary conditions. This test will measure primarily exhaust noise and does not represent the optimum procedure for evaluating total vehicle noise. For this purpose, SAE J331 or SAE J47 is recommended.

### **Reference Section**

SAE J47—Maximum Sound Level Potential for Motorcycles

SAE J184—Qualifying a Sound Data Acquisition System

SAE J213—Definitions—Motorcycles

SAE J331—Sound Levels for Motorcycles

SAE J1349—Engine Power Test Code—Spark Ignition and Diesel

SAE TSB 002 JUN86—Preparation of SAE Technical Reports

ANSI S1.4-1983—Specification for Sound Level Meters

**Developed by the SAE Motorcycle Committee**

**GAME AND FISH COMMISSION**

Title 12, Chapter 4, Article 1, Definitions and General Provisions; Article 2, Licenses; Permits; Stamps;  
Tags



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 30, 2019

**SUBJECT: ARIZONA GAME AND FISH COMMISSION**  
Title 12, Chapter 4, Article 1, Definitions and General Provisions; Article 2,  
Licenses; Permits; Stamps; Tags

**Amend:** R12-4-102; R12-4-106

**New Section:** R12-4-204

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During the Second Regular Session of the 53rd Arizona State Legislature, the Legislature amended A.R.S. § 17-363 to require a taxidermist to register with the Arizona Game and Fish Department (Department), maintain a register for five years after the date wildlife is received, and file a copy of the register with the Department by January 31 of each year. A.R.S. § 17-363 authorizes the Commission to adopt rules to allow a person so register pursuant to this section.

The Commission proposes to amend rules to implement the statutory amendments made to A.R.S. § 17-363 as follows:

- **R12-4-102:** The Commission proposes to amend the rule to replace the term "Taxidermist License" with "Taxidermy Registration" and reduce the associated fee to \$100 from \$150.
- **R12-4-106:** Under A.R.S. § 41-1073, an agency is required to establish an overall time-frame in which the agency will either grant or deny an authorization that it issues.

The Commission proposes to amend the rule to establish a 30-day time-frame (10-day administrative review and 20-day substantive review) for the Taxidermy Registration.

- Under A.R.S. § 17-363, “[a] person shall not engage in the business of a taxidermist for hire until that person registers with the Department.” The Commission proposes to adopt a rule to establish application and register requirements necessary to administer the taxidermy registration program. The Commission also proposes to adopt a rule to establish circumstances that will cause the Department to deny a taxidermy registration. The Commission also proposes to adopt a rule to establish that an applicant who is denied a taxidermist registration may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

The Governor’s office granted an exception to the rulemaking moratorium to the Department on November 20, 2018.

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

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

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

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

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

This rulemaking simply implements the statute to require a taxidermist to register with the Commission; maintain a register for five years after the data wildlife is received; and file a copy of the register with the Commission by January 31 of each year. In addition, the Commission proposes to reduce the associated fee from \$150 to \$100.

Stakeholders include the Commission and persons engaging or wanting to engage in the business of a taxidermist for hire. The Commission anticipates that rules will have no increased costs other than the costs to the Commission related to implementing the rules.

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

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking. The Commission holds that the benefits of the proposed rulemaking outweigh any costs.

**5. What are the economic impacts on stakeholders?**

The Commission will incur the costs of implementing the rules. The Commission anticipates the proposed amendments to the rules will have no substantial impact on private or public employment in businesses, agencies, or political subdivisions of this state. The rulemaking either reduces or makes no changes to the current regulatory burden, so the Commission anticipates that persons directly affected by the rule will not incur any additional costs as a result of the rulemaking. For most businesses directly affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be moderate, if at all.

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

The Department did not receive any written or oral comments regarding this rulemaking.

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

No. The final rules are not a substantial change, considered as a whole, from the proposed rules. The Department indicates that it made minor grammatical and formatting corrections at the request of Council staff.

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

Not applicable. There is no corresponding federal law.

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

These rules require a Taxidermy Registration as per R12-4-204. This Taxidermy Registration falls within the definition of “general permit” as defined under A.R.S. § 41-1001(11). As such, the agency has complied with A.R.S. § 41-1037.

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

The Department did not rely on any study in its evaluation of or justification for the rules.

**11. Conclusion**

Council staff finds that the rules are written in a manner that is clear, concise, and understandable to the general public.

The Department has proposed an immediate effective date for these rules pursuant to A.R.S. § 41-1032(A)(2) to prevent the rules from being inconsistent with, or in violation of state law, specifically, amendments to A.R.S. § 17-363. The Department indicates that the need for an immediate effective date was not created by the Commission's delay or inaction.

Council staff recommends approval of this rulemaking.



May 10, 2019

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

**Re: A.A.C. Title 12. Natural Resources, Chapter 4. Game and Fish Commission Articles 1. Definitions and General Provisions and 2. Licenses; Permits; Stamps; Tags**

Dear Ms Sornsin:

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

In compliance with R1-6-201(A)(1), the Department provides you with the following information:

- a. The rulemaking record closed on May 10, 2019.
- b. This rulemaking activity is not related to the five-year-review report approved by the Council.
- c. This rulemaking does not establish a new fee.
- d. This rulemaking does not contain a fee increase.
- e. An immediate effective date is not requested.
- f. The preamble discloses a reference to all studies relevant to the rule that the agency reviewed and either did or did not rely on in its evaluation of, or justification for, the rule.
- g. The preparer of the Economic, Small Business, and Consumer Impact Statement did not notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule as the Commission determined that the implementation of the amended rule does not require any new full-time employees.

**azgfd.gov | 602.942.3000**

**5000 W. CAREFREE HIGHWAY, PHOENIX AZ 85086**

**GOVERNOR: DOUGLAS A. DUCEY COMMISSIONERS: CHAIRMAN, JAMES S. ZIELER, ST. JOHNS | ERIC S. SPARKS, TUCSON | KURT R. DAVIS, PHOENIX  
LELAND S. "BILL" BRAKE, ELGIN | JAMES E. GOUGHNOUR, PAYSON DIRECTOR: TY E. GRAY DEPUTY DIRECTOR: TOM P. FINLEY**

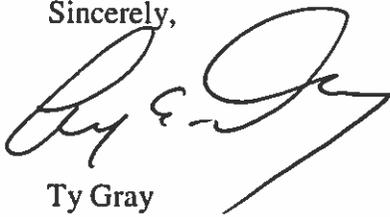
**Re: A.A.C. Title 12. Natural Resources, Chapter 4. Game and Fish Commission Articles 1. Definitions and General Provisions and 2. Licenses; Permits; Stamps; Tags**

Page 2

**h.** Items included in the rulemaking package are as follows:

- Signed cover letter
- Notice of Final Rulemaking
- Economic Impact Statement
- Authorizing statute: A.R.S. § 17-231(A)(1)
- Implementing statute: A.R.S. §§ 17-101, 17-102, 17-333, 17-335.01, 17-363, and 41-1005
- Definitions of terms contained in statute or other rules and used in the rulemaking

Sincerely,

A handwritten signature in black ink, appearing to read "Ty Gray", written in a cursive style.

Ty Gray  
Director

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

**PREAMBLE**

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

R12-4-102	Amend
R12-4-106	Amend
R12-4-204	New Section
  
- 2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute:    A.R.S. § 17-231(A)(1)  
Implementing statute:    A.R.S. §§ 17-101, 17-102, 17-333, 17-335.01, 17-363, and 41-1005
  
- 3. The effective date of the rules:** The rules will become effective immediately upon filing with the Secretary of State's office. The Commission has selected this date to prevent the rules from being inconsistent with State law, namely the amendments to A.R.S. §17-363 that took effect January 1, 2019. The need for this effective date was not created by the Commission's delay or inaction.
  - a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable
  
  - b. If the agency selected a date later than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(B):**

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 376, February 15, 2019  
Notice of Proposed Rulemaking: 25 A.A.R. 349, February 15, 2019
  
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name:            Celeste Cook, Rules and Policy Manager  
Address:        Arizona Game and Fish Department  
                      5000 W. Carefree Highway  
                      Phoenix, AZ 85086  
Telephone:     (623) 236-7390  
Fax:              (623) 236-7677

E-mail: CCook@azgfd.gov

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

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

During the Second Regular Session of the 53rd Arizona State Legislature, the Legislature amended A.R.S. § 17-363 to require a taxidermist to register with the Department, maintain a register for five years after the date wildlife is received; and file a copy of the register with the Department by January 31 of each year. A.R.S. § 17-363, authorizes the Commission to adopt rules to allow a person to register pursuant to this section. The Commission proposes to amend rules to implement the statutory amendments made to A.R.S. § 17-363 as follows:

**R12-4-102. License, Permit, Stamp, and Tag Fees**

The Commission proposes to amend the rule to replace the term "Taxidermist License" with "Taxidermy Registration" and reduce the associated fee to \$100 from \$150.

**R12-4-106. Special Licenses Licensing Time-frames**

Under A.R.S. § 41-1073, an agency is required to establish an overall time-frame in which the agency will either grant or deny an authorization that it issues. The Commission proposes to amend the rule to establish a 30-day time-frame (10-day administrative review and 20-day substantive review) for the Taxidermy Registration. This time frame is consistent with other similar authorizations issued by the Department.

**R12-4-204. Taxidermy Registration; Register**

Under A.R.S. § 17-363, "A person shall not engage in the business of a taxidermist for hire until that person registers with the Department." Under A.R.S. § 17-363, "A person shall not engage in the business of a taxidermist for hire until that person registers with the Department." The Commission proposes to adopt a rule to establish application and register requirements necessary to administer the taxidermy registration program. The Commission proposes to adopt a rule to establish circumstances that will cause the Department to deny a taxidermy registration. Causes for denial include: the applicant fails to meet the requirements established under the new rule, the applicant provides false information during the application process, or the applicant provides false information in the register required under A.R.S. § 17-363(B). The Commission also proposes to adopt a rule to establish that an applicant who is denied a taxidermist registration may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

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

The agency did not rely on any study in its evaluation of or justification for the rule.

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

Not applicable

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

The Commission's intent in proposing the amendments is to ensure compliance with recent legislative amendments, provide better customer service to persons seeking to conduct wildlife related activities in Arizona, and increase efficiency in administering the taxidermy registration.

Previously, the taxidermy license was administered under the statutory authority provided under A.R.S. § 17-363; which required any person who engages in taxidermy to obtain a license from the Department and keep a register of the names and addresses of persons who furnish raw and unmounted specimens, the taker's tag or license number, and the date and number of each species of wildlife received. On request, the taxidermist was required to provide the register information to any authorized representative of the Department and the U.S. Fish and Wildlife Services upon request. Additionally, the taxidermist was required to file quarterly reports with the Department that included the taxidermist's register information.

The rulemaking simply implements the statute to require a taxidermist to register with the Department, maintain a register for five years after the date wildlife is received; and file a copy of the register with the Department by January 31 of each year.

In addition, the Commission proposes to reduce the associated fee to \$100 (from \$150).

The Department believes the rule imposes the least burdens and costs on persons regulated by the rule.

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

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

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

The Notice of Proposed Rulemaking was published in the Arizona Administrative Register on February 8, 2019; the official public comment period began February 8, 2019 and ended on March 8, 2019. The Department also sent correspondence to all currently licensed taxidermists explaining the proposed rulemaking and soliciting comments regarding the proposed changes included in the Notice of Proposed Rulemaking and the Department's contact information for persons interested in submitting a comment. The Department did not receive any public or stakeholder comments in response to the proposed rulemaking.

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

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

The Taxidermy Registration described in R12-4-204 falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11). The rule complies with A.R.S. § 41-1037.

No other rules included in this rulemaking package require the issuance of a regulatory permit, license, or

agency authorization.

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

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

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

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

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

Not applicable

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

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

**15. The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**  
**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

Section

- R12-4-102. License, Permit, Stamp, and Tag Fees
- R12-4-106. Special Licenses Licensing Time-frames

**ARTICLE 2. LICENSE; PERMIT; STAMP; TAG**

Section

- R12-4-204. Taxidermy Registration; Register

**CHAPTER 4. GAME AND FISH COMMISSION**  
**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

**R12-4-102. License, Permit, Stamp, and Tag Fees**

- A. A person who purchases a license, tag, stamp, or permit listed in this Section shall pay at the time of purchase all applicable fees prescribed under this Section or the fees the Director authorizes under R12-4-115.
- B. A person who applies to purchase a hunt permit-tag shall submit with the application all applicable fees using acceptable forms of payment as required under R12-4-104(F) and (G).
- C. As authorized under A.R.S. § 17-345, the license fees in this section include a \$3 surcharge, except Youth and High Achievement Scout licenses.

<b>Hunting and Fishing License Fees</b>	<b>Resident</b>	<b>Nonresident</b>
General Fishing License	\$37	\$55
Community Fishing License	\$24	\$24
General Hunting License	\$37	Not available
Combination Hunting and Fishing License	\$57	\$160
Youth Combination Hunting and Fishing License, fee applies until the applicant's 18th birthday.	\$5	\$5
High Achievement Scout License, as authorized under A.R.S. § 17-336(B). Fee applies until the applicant's 21st birthday.	\$5	Not available
Short-term Combination Hunting and Fishing License	\$15	\$20
Youth Group Two-day Fishing License	\$25	Not available

<b>Hunt Permit-tag Fees</b>	<b>Resident</b>	<b>Nonresident</b>
Antelope	\$90	\$550
Bear	\$25	\$150
Bighorn Sheep	\$300	\$1,800
Buffalo		
Adult Bulls or Any Buffalo	\$1,100	\$5,400
Adult Cows	\$650	\$3,250
Yearling	\$350	\$1,750
Cow or Yearling	\$650	\$3,250
Deer and Archery Deer	\$45	\$300
Youth	\$25	\$25

Elk	\$135	\$650
Youth	\$50	\$50
Javelina	\$25	\$100
Youth	\$15	\$15
Pheasant non-archery, non-falconry	Application fee only	Application fee only
Turkey and Archery Turkey	\$25	\$90
Youth	\$10	\$10
Sandhill Crane	\$10	\$10
<b>Nonpermit-tag and Restricted Nonpermit-tag Fees</b>	<b>Resident</b>	<b>Nonresident</b>
Antelope	\$90	\$550
Bear	\$25	\$150
Buffalo		
Adult Bulls or Any Buffalo	\$1,100	\$5,400
Adult Cows	\$650	\$3,250
Yearling	\$350	\$1,750
Cow or Yearling	\$650	\$3,250
Deer	\$45	\$300
Youth	\$25	\$25
Elk	\$135	\$650
Youth	\$50	\$50
Javelina	\$25	\$100
Youth	\$15	\$15
Mountain Lion	\$15	\$75
Turkey	\$25	\$90
Youth	\$10	\$10
Sandhill Crane	\$10	\$10
<b>Stamps and Special Use Fees</b>	<b>Resident</b>	<b>Nonresident</b>
Arizona Colorado River Special Use Permit Stamp. For use by California and Nevada licensees	Not available	\$3
Bobcat Seal	\$3	\$3
State Migratory Bird Stamp	\$5	\$5

<b>Other License Fees</b>	<b>Resident</b>	<b>Nonresident</b>
Fur Dealer's License	\$115	\$115
Guide License	\$300	\$300
License Dealer's License	\$100	\$100
License Dealer's Outlet License	\$25	\$25
Taxidermist <del>License</del> <u>Registration</u>	<del>\$150</del> <u>\$100</u>	<del>\$150</del> <u>\$100</u>
Trapping License	\$30	\$275
Youth	\$10	\$10
<b>Administrative Fees</b>	<b>Resident</b>	<b>Nonresident</b>
Duplicate License Fee	\$4	\$4
Application Fee	\$13	\$15

- D. A person desiring a replacement of a Migratory Bird or Arizona Colorado River Special Use Permit Stamp shall repurchase the stamp.

**R12-4-106. Special Licenses Licensing Time-frames**

- A. For the purposes of this Section, the following definitions apply:

“Administrative review time-frame” has the same meaning as prescribed under A.R.S. § 41-1072(1).

“License” means any permit or authorization issued by the Department and listed under subsection (H).

“Overall time-frame” has the same meaning as prescribed under A.R.S. § 41-1072(2).

“Substantive review time-frame” has the same meaning as prescribed under A.R.S. § 41-1072(3).

- B. As required under A.R.S. § 41-1072 et seq., within the overall time-frames listed in the table below, the Department shall either:
1. Grant a license to an applicant after determining the applicant meets all of the criteria required by statute and the governing rule; or
  2. Deny a license to an applicant when the Department determines the applicant does not meet all of the criteria required by statute and the governing rule.
    - a. The Department may deny a license at any point during the review process if the information provided by the applicant demonstrates the applicant is not eligible for the license as prescribed under statute or the governing rule.
    - b. The Department shall issue a written denial notice when it is determined that an applicant does not meet all of the criteria for the license.
    - c. The written denial notice shall provide:
      - i. The Department's justification for the denial, and
      - ii. When a hearing or appeal is authorized, an explanation of the applicant's right to a hearing or appeal.

- C.** During the overall time-frame:
1. The applicant and the Department may agree in writing to extend the overall time-frame.
  2. The substantive review time-frame shall not be extended by more than 25% of the overall time-frame.
- D.** An applicant may withdraw an application at any time.
- E.** The administrative review time-frame shall begin upon the Department's receipt of an application.
1. During the administrative review time-frame, the Department may return to the applicant, without denial, an application that is missing any of the information required under R12-4-409 and the rule governing the specific license. The Department shall issue to the applicant a written notice that identifies all missing information and indicates the applicant has 30 days in which to return the missing information.
  2. The administrative review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the notice until the date the Department receives the missing information.
  3. If an applicant fails to respond to a request for missing information within 30 days, the Department shall consider the application withdrawn.
- F.** The substantive review time-frame shall begin when the Department determines an application is complete.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The written notice shall:
    - a. Identify the additional information, and
    - b. Indicate the applicant has 30 days in which to submit the additional information.
    - c. The Department and the applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information.
    - d. If an applicant fails to respond to a request for additional information within 30 days, the Department shall consider the application withdrawn.
  2. The substantive review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the request until the date the Department receives the additional information.
- G.** If the last day of the time-frame period falls on a Saturday, Sunday, or an official State holiday, the Department shall consider the next business day the time-frame period's last day. All periods listed are:
1. Calendar days, and
  2. Maximum time periods.
- H.** The Department may grant or deny a license in less time than specified below.

Name of Special License	Governing Rule	Administrative Review Time-frame	Substantive Review Time-frame	Overall Time-frame
Aquatic Wildlife Stocking Permit	R12-4-410	10 days	170 days	180 days

Authorization for Use of Drugs on Wildlife	R12-4-309	20 days	70 days	90 days
Challenged Hunter Access/Mobility Permit	R12-4-217	1 day	29 days	30 days
Crossbow Permit	R12-4-216	1 day	29 days	30 days
Disabled Veteran's License	R12-4-202	1 day	29 days	30 days
Fishing Permits	R12-4-310	10 days	20 days	30 days
Game Bird License	R12-4-414	10 days	20 days	30 days
Guide License	R12-4-208	10 days	20 days	30 days
License Dealer's License	R12-4-105	10 days	20 days	30 days
Live Bait Dealer's License	R12-4-411	10 days	20 days	30 days
Pioneer License	R12-4-201	1 day	29 days	30 days
Private Game Farm License	R12-4-413	10 days	20 days	30 days
Scientific Collecting Permit	R12-4-418	10 days	20 days	30 days
Small Game Depredation Permit	R12-4-113	10 days	20 days	30 days
Sport Falconry License	R12-4-422	10 days	20 days	30 days
<u>Taxidermy Registration</u>	<u>R12-4-204</u>	<u>10 days</u>	<u>20 days</u>	<u>30 days</u>
Watercraft Agents	R12-4-509	10 days	20 days	30 days
White Amur Stocking License	R12-4-424	10 days	20 days	30 days
Wildlife Holding License	R12-4-417	10 days	20 days	30 days
Wildlife Rehabilitation License	R12-4-423	10 days	50 days	60 days
Wildlife Service License	R12-4-421	10 days	50 days	60 days
Zoo License	R12-4-420	10 days	20 days	30 days

## ARTICLE 2. LICENSE; PERMIT; STAMP; TAG

### **R12-4-204. Taxidermy Registration; Register**

- A.** A person shall register with the Department before engaging in the business of taxidermy for hire. A taxidermy registration authorizes a person to mount, refurbish, maintain, restore, or preserve wildlife as defined under A.R.S. § 17-101.
- B.** A taxidermy registration expires on December 31 of each year.
- C.** The Department shall deny a taxidermy registration when the applicant:
1. Fails to meet the requirements established under this Section;
  2. Provides false information during the application process; or
  3. Provides false information in the register required under A.R.S. § 17-363(B).
- D.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- E.** A person may apply for a taxidermy registration by paying the applicable fee and submitting an application to the Department. The application form is available on the Department's website. A taxidermy registration applicant shall provide all of the following information:
1. The applicant's information:
    - a. Name;
    - b. Date of birth;
    - c. Department identification number, when applicable;
    - d. Mailing address, when applicable;
    - e. Physical address;
    - f. Telephone number, when available;
    - g. Email address, when available; and
  2. The applicant's business information:
    - a. Name;
    - b. Mailing address;
    - c. Email address;
    - d. Website URL address, if available;
    - e. Business telephone number, when applicable;
    - f. Calendar year for which the application is made; and
    - g. Whether the applicant is seeking renewal of an existing taxidermy registration.
  3. Affirmation that the information provided on the application is true and accurate; and
  4. Applicant's signature and date.
- F** A registered taxidermist may submit an application for renewal of a taxidermy registration after December 1 of the year it was issued.

**G.** A registered taxidermist shall maintain a register of all persons who furnish raw and unmounted wildlife specimens for taxidermy service using the form available on the Department's website.

1. This register shall be:

- a. Maintained for a period of five years after the date the raw and unmounted wildlife specimens were received;
- b. Provided upon request to an employee of the Department; and
- c. Filed with the Department on or before January 31 of each year.

2. This register shall contain all of the following information, as applicable:

a. The registered taxidermist's information:

- i. Name;
- ii. Taxidermy registration number;
- iii. Email address, when available; and

b. The customer's or potential customer's:

- i. Name;
- ii. Address;
- iii. Taker's tag or license number;
- iv. Species and number of wildlife received;
- v. Date wildlife received; and

c. A signed affirmation from the registered taxidermist that the information provided in the register is true and accurate.

3. The taxidermy renewal registration becomes invalid if the register is not submitted to the Department by January 31 of the year following registration.

**H.** As authorized under A.R.S. § 17-363(C), the Commission may revoke or suspend the taxidermy registration of a person convicted of violating any provision of A.R.S. § 17-363 or requirement established under this Section.

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 4. GAME AND FISH COMMISSION**  
**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**  
**ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS**  
**R12-4-102, R12-4-106, AND R12-4-204**  
**Economic, Small Business and Consumer Impact Statement**

**A. Economic, small business and consumer impact summary:**

**1. Identification of the proposed rulemaking.**

During the Second Regular Session of the 53rd Arizona State Legislature, the Legislature amended A.R.S. § 17-363 to require a taxidermist to register with the Department, maintain a register for five years after the date wildlife is received; and file a copy of the register with the Department by January 31 of each year. A.R.S. § 17-363, authorizes the Commission to adopt rules to allow a person to register pursuant to this section. The Commission proposes to amend rules to implement the statutory amendments made to A.R.S. § 17-363 as follows:

**R12-4-102. License, Permit, Stamp, and Tag Fees**

The Commission proposes to amend the rule to replace the term "license" with "registration" and reduce the associated fee from \$150 to \$100.

**R12-4-106. Special Licenses Licensing Time-frames**

Under A.R.S. § 41-1073, an agency is required to establish an overall time-frame in which the agency will either grant or deny an authorization that it issues. The Commission proposes to amend the rule to establish a 30-day time-frame (10-day administrative review and 20-day substantive review) for the Taxidermy Registration. This time frame is consistent with other similar authorizations issued by the Department.

**R12-4-204. Taxidermy Registration; Register**

Under A.R.S. § 17-363, "A person shall not engage in the business of a taxidermist for hire until that person registers with the Department." The Commission proposes to adopt a rule to establish application and register requirements necessary to administer the taxidermy registration program. The Commission proposes to adopt a rule to establish circumstances that will cause the Department to deny a taxidermy registration. Causes for denial include: the applicant fails to meet the requirements established under the new rule, the applicant provides false information during the application process, or the applicant provides false information in the register required under A.R.S. § 17-363(B). The Commission also proposes to adopt a rule to establish that an applicant who is denied a taxidermist registration may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

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

Not applicable; the rulemaking is undertaken to comply with recent legislative amendments made to A.R.S. § 17-363.

**(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.**

Not applicable; the rulemaking is undertaken to comply with recent legislative amendments made to A.R.S. § 17-363.

**(c) The estimated change in frequency of the targeted conduct expected from the rule change.**

Not applicable; the rulemaking is undertaken to comply with recent legislative amendments made to A.R.S. § 17-363.

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

The Commission's intent in proposing the amendments is to ensure compliance with recent legislative amendments, provide better customer service to persons seeking to conduct wildlife related activities in Arizona, and increase efficiency in administering the taxidermy registration.

Previously, the taxidermy license was administered under the statutory authority provided under A.R.S. § 17-363; which required any person who engages in taxidermy to obtain a license from the Department and keep a register of the names and addresses of persons who furnish raw and unmounted specimens, the taker's tag or license number, and the date and number of each species of wildlife received. On request, the taxidermist was required to provide the register information to any authorized representative of the Department and the U.S. Fish and Wildlife Services upon request. Additionally, the taxidermist was required to file quarterly reports with the Department that included the taxidermist's register information.

The rulemaking simply implements the statute to require a taxidermist to register with the Department, maintain a register for five years after the date wildlife is received; and file a copy of the register with the Department by January 31 of each year.

In addition, the Commission proposes to reduce the associated fee to \$100 (from \$150).

The Department believes the rule imposes the least burdens and costs on persons regulated by the rule.

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

Name: Celeste Cook, Director's Office Rules and Policy Manager

Address: Arizona Game and Fish Department

5000 W. Carefree Highway

Phoenix, Arizona 85086

Telephone: (623) 236-7390

Fax: (623) 236-7677

E-mail: CCook@azgfd.gov

**B. The 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 who will be directly affected by and bear the costs of the proposed rulemaking:

Arizona Game and Fish Department

Persons engaging or wanting to engage in the business of a taxidermist for hire

Persons who directly benefit from the proposed rulemaking:

Arizona Game and Fish Department

Persons engaging or wanting to engage in the business of a taxidermist for hire

**3. Cost benefit analysis:**

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

Minimal	less than \$1,000
Moderate	\$1,000 to \$9,999
Substantial	\$10,000 or more

**(a) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.**

The Commission anticipates the Department will incur a substantial impact implementing the taxidermist registration program: costs associated with rulemaking, implementation of the rules, which includes developing an online application and reporting system, and the resources necessary to administer the program.

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

The Commission does not anticipate the proposed rulemaking will significantly affect political subdivisions of this state.

**(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 Commission anticipates the proposed amendments will have no substantial impact on businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant.

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

The Commission anticipates the proposed amendments will have no substantial impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking. Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates persons directly affected by the rule will not incur any additional costs as a result of the rulemaking. For most businesses directly affected by the rulemaking, any anticipated costs incurred are strictly administrative in nature and are believed to be moderate, if at all.

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

**(a) Identification of the small businesses subject to the proposed rulemaking.**

Businesses that provide taxidermy services for hire.

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

The Commission anticipates the proposed rulemaking will not create additional costs for compliance.

**(c) Description of the methods that the agency may use to reduce the impact on small businesses.**

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed rules are less burdensome than the previous process implemented under A.R.S. § 17-363.

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

The Commission anticipates the proposed rulemaking will result in a minimal impact to persons engaging or wanting to engage in the business of a taxidermist for hire.

The Commission does not anticipate the fee will significantly affect a person's ability to participate in the activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity.

**6. Statement of the probable effect on state revenues.**

The proposed rulemaking will not significantly impact state revenues.

**7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.**

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking. The Commission holds that the benefits of the proposed rulemaking outweigh any costs.

**8. Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

For this rulemaking, the Commission relied on empirical data based on agency experience and observations, which included comments the Department solicited from the regulated public prior to filing the Notice of Proposed Rulemaking, and agency staff that administer and enforce the rules included in this rulemaking.

The Commission relied on historical data (i.e., meeting notes from previous rulemaking teams, Department reports [sportsman data, violation data, etc.], other state agency rules, etc.), current processes, benchmarking with other states, and the Department's overall mission. The subjects the rules address are based on statutory requirements rather than natural sciences, thus recommendations relied more heavily on empirical qualitative data using agency experience and observations instead of quantitative data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

- C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The 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.**

The Department tasked a team of subject matter experts to review and make recommendations for rules relating to taxidermist registration. In its review, the team considered all comments from the public and agency staff that administer and enforce taxidermy licensing, historical data, current processes and environment, and the Department's overall mission. The team took a customer-focused approach, considering each recommendation from a resource perspective and determining whether the recommendation would cause undue harm to the Department's goals and objectives. The team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public. The Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.

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“Rooster” means a male pheasant.

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

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Amended effective October 22, 1976 (Supp. 76-5). Amended effective June 29, 1978 (Supp. 78-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-01 renumbered as Section R12-4-101 without change effective August 13, 1981 (Supp. 81-4). Amended effective April 22, 1982 (Supp. 82-2). Amended subsection (A), paragraph (10) effective April 7, 1983 (Supp. 83-2). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Amended subsection (A) effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-102. License, Permit, Stamp, and Tag Fees**

- A. A person who purchases a license, tag, stamp, or permit listed in this Section shall pay at the time of purchase all applicable fees prescribed under this Section or the fees the Director authorizes under R12-4-115.
- B. A person who applies to purchase a hunt permit-tag shall submit with the application all applicable fees using acceptable forms of payment as required under R12-4-104(F) and (G).
- C. As authorized under A.R.S. § 17-345, the license fees in this section include a \$3 surcharge, except Youth and High Achievement Scout licenses.

Hunting and Fishing License Fees	Resident	Nonresident
General Fishing License	\$37	\$55
Community Fishing License	\$24	\$24
General Hunting License	\$37	Not available
Combination Hunting and Fishing License	\$57	\$160
Youth Combination Hunting and Fishing License, fee applies until the applicant’s 18th birthday.	\$5	\$5
High Achievement Scout License, as authorized under A.R.S. § 17-336(B). Fee applies until the applicant’s 21st birthday.	\$5	Not available
Short-term Combination Hunting and Fishing License	\$15	\$20

Youth Group Two-day Fishing License	\$25	Not available
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Hunt Permit-tag Fees	Resident	Nonresident
Antelope	\$90	\$550
Bear	\$25	\$150
Bighorn Sheep	\$300	\$1,800
Buffalo		
Adult Bulls or Any Buffalo	\$1,100	\$5,400
Adult Cows	\$650	\$3,250
Yearling	\$350	\$1,750
Cow or Yearling	\$650	\$3,250
Deer and Archery Deer	\$45	\$300
Youth	\$25	\$25
Elk	\$135	\$650
Youth	\$50	\$50
Javelina	\$25	\$100
Youth	\$15	\$15
Pheasant non-archery, non-falconry	Application fee only	Application fee only
Turkey and Archery Turkey	\$25	\$90
Youth	\$10	\$10
Sandhill Crane	\$10	\$10

Nonpermit-tag and Restricted Non-permit-tag Fees	Resident	Nonresident
Antelope	\$90	\$550
Bear	\$25	\$150
Buffalo		
Adult Bulls or Any Buffalo	\$1,100	\$5,400
Adult Cows	\$650	\$3,250
Yearling	\$350	\$1,750
Cow or Yearling	\$650	\$3,250
Deer	\$45	\$300
Youth	\$25	\$25
Elk	\$135	\$650
Youth	\$50	\$50
Javelina	\$25	\$100
Youth	\$15	\$15
Mountain Lion	\$15	\$75
Turkey	\$25	\$90
Youth	\$10	\$10
Sandhill Crane	\$10	\$10

Stamps and Special Use Fees	Resident	Nonresident
Arizona Colorado River Special Use Permit Stamp. For use by California and Nevada licensees	Not available	\$3
Bobcat Seal	\$3	\$3
State Migratory Bird Stamp	\$5	\$5

Other License Fees	Resident	Nonresident
Fur Dealer’s License	\$115	\$115
Guide License	\$300	\$300

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License Dealer's License	\$100	\$100
License Dealer's Outlet License	\$25	\$25
Taxidermist License	\$150	\$150
Trapping License	\$30	\$275
Youth	\$10	\$10
<b>Administrative Fees</b>	<b>Resident</b>	<b>Nonresident</b>
Duplicate License Fee	\$4	\$4
Application Fee	\$13	\$15

D. A person desiring a replacement of a Migratory Bird or Arizona Colorado River Special Use Permit Stamp shall repurchase the stamp.

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Amended effective March 31, 1977 (Supp. 77-2). Amended effective June 28, 1977 (Supp. 77-3). Amended effective October 20, 1977 (Supp. 77-5). Amended effective January 1, 1979 (Supp. 78-6). Amended effective June 4, 1979 (Supp. 79-3). Amended effective January 1, 1980 (Supp. 79-6). Amended paragraphs (1), (7) through (11), (13), (15), (29), (30), and (32) effective January 1, 1981 (Supp. 80-5). Former Section R12-4-30 renumbered as Section R12-4-102 without change effective August 13, 1981. Amended effective August 31, 1981 (Supp. 81-4). Amended effective September 15, 1982 unless otherwise noted in subsection (D) (Supp. 82-5). Amended effective January 1, 1984 (Supp. 83-4). Amended subsections (A) and (C) effective January 1, 1985 (Supp. 84-5). Amended effective January 1, 1986 (Supp. 85-5). Amended subsection (A), paragraphs (1), (2), (8) and (9) effective January 1, 1987; Amended by adding a new subsection (A), paragraph (31) and renumbering accordingly effective July 1, 1987. Both amendments filed November 5, 1986 (Supp. 86-6). Amended subsections (A) and (C) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsections (A) and (C) filed December 30, 1988, effective January 1, 1989"; Amended subsection (C) effective April 28, 1989 (Supp. 89-2). Section R12-4-102 repealed, new Section R12-4-102 filed as adopted November 26, 1990, effective January 1, 1991 (Supp. 90-4). Amended effective September 1, 1992; filed August 7, 1992 (Supp. 92-3). Amended effective January 1, 1993; filed December 18, 1993 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective December 16, 1995 (Supp. 94-4). Amended effective January 1, 1997; filed in the Office of the Secretary of State November 14, 1995 (Supp. 95-4). Amended subsection (D), paragraph (4), and subsection (E), paragraph (10), effective October 1, 1996; filed in the Office of the Secretary of State July 12, 1996 (Supp. 96-3). Amended subsection (B), paragraph (6) and subsection (E) paragraph (4), effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 or January 1, 2001, as designated within the text of the Section (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 1157, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2823, effective August 13, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 1391, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 1391, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-103. Duplicate Tags and Licenses**

- A. Under A.R.S. § 17-332(C), the Department and its license dealers may issue a duplicate license or tag to an applicant who:
  - 1. Pays the applicable fee prescribed under R12-4-102, and
  - 2. Signs an affidavit. The affidavit is furnished by the Department and is available at any Department office or license dealer.
- B. The applicant shall provide the following information on the affidavit:
  - 1. The applicant's personal information:
    - a. Name;
    - b. Department identification number, when applicable;
    - c. Residency status and number of years of residency immediately preceding application, when applicable;
  - 2. The original license or tag information:
    - a. Type of license or tag;
    - b. Place of purchase;
    - c. Purchase date, when available; and
  - 3. Disposition of the original tag for which a duplicate is being purchased:
    - a. The tag was not used and is lost, destroyed, mutilated, or otherwise unusable; or
    - b. The tag was placed on a harvested animal that was subsequently condemned and the carcass and all parts of the animal were surrendered to a Department employee as required under R12-4-112(B) and (C). An applicant applying for a duplicate tag under this subsection shall also submit the condemned meat duplicate tag authorization form issued by the Department.
- C. In the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year.

**Historical Note**

Amended effective June 7, 1976 (Supp. 76-3). Amended effective October 20, 1977 (Supp. 77-5). Former Section R12-4-07 renumbered as Section R12-4-103 without change effective August 13, 1981 (Supp. 81-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points**

- A. For the purposes of this Section, "group" means all applicants who placed their names on a single application as part of the same application.
- B. A person is eligible to apply:
  - 1. For a hunt permit-tag if the person:
    - a. Is at least 10 years of age at the start of the hunt for which the person is applying;
    - b. Has successfully completed a Department-sanctioned hunter education course by the start date of

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3. Otherwise fails to comply with this Section and all applicable statutes and rules.
- M.** As prescribed under A.R.S. § 17-338, the actual cash value of licenses not returned to the Department is due and payable to the Department within 15 working days from the date the Department provides written notice to the license dealer. This includes, but is not limited to:
1. Licenses not returned upon termination of business by a license dealer; or
  2. Licenses reported by a dealer outlet or discovered by the Department to be lost, missing, stolen, or destroyed for any reason.
- N.** In addition to those violations that may result in revocation, suspension, or cancellation of a license dealer's license as prescribed under A.R.S. §§ 17-334, 17-338, and 17-339, the Commission may revoke a license dealer's license if the license dealer or an employee of the license dealer is convicted of counseling, aiding, or attempting to aid any person in obtaining a fraudulent license.
- Historical Note**
- Amended effective June 7, 1976 (Supp. 77-3). Former Section R12-4-08 renumbered as Section R12-4-105 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).
- R12-4-106. Special Licenses Licensing Time-frames**
- A.** For the purposes of this Section, the following definitions apply:
- "Administrative review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(1).
- "License" means any permit or authorization issued by the Department and listed under subsection (H).
- "Overall time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(2).
- "Substantive review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(3).
- B.** As required under A.R.S. § 41-1072 et seq., within the overall time-frames listed in the table below, the Department shall either:
1. Grant a license to an applicant after determining the applicant meets all of the criteria required by statute and the governing rule; or
  2. Deny a license to an applicant when the Department determines the applicant does not meet all of the criteria required by statute and the governing rule.
    - a. The Department may deny a license at any point during the review process if the information provided by the applicant demonstrates the applicant is not eligible for the license as prescribed under statute or the governing rule.
    - b. The Department shall issue a written denial notice when it is determined that an applicant does not meet all of the criteria for the license.
    - c. The written denial notice shall provide:
      - i. The Department's justification for the denial, and
      - ii. When a hearing or appeal is authorized, an explanation of the applicant's right to a hearing or appeal.
- C.** During the overall time-frame:
1. The applicant and the Department may agree in writing to extend the overall time-frame.
  2. The substantive review time-frame shall not be extended by more than 25% of the overall time-frame.
- D.** An applicant may withdraw an application at any time.
- E.** The administrative review time-frame shall begin upon the Department's receipt of an application.
1. During the administrative review time-frame, the Department may return to the applicant, without denial, an application that is missing any of the information required under R12-4-409 and the rule governing the specific license. The Department shall issue to the applicant a written notice that identifies all missing information and indicates the applicant has 30 days in which to return the missing information.
  2. The administrative review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the notice until the date the Department receives the missing information.
  3. If an applicant fails to respond to a request for missing information within 30 days, the Department shall consider the application withdrawn.
- F.** The substantive review time-frame shall begin when the Department determines an application is complete.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The written notice shall:
    - a. Identify the additional information, and
    - b. Indicate the applicant has 30 days in which to submit the additional information.
    - c. The Department and the applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information.
    - d. If an applicant fails to respond to a request for additional information within 30 days, the Department shall consider the application withdrawn.
  2. The substantive review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the request until the date the Department receives the additional information.
- G.** If the last day of the time-frame period falls on a Saturday, Sunday, or an official State holiday, the Department shall consider the next business day the time-frame period's last day. All periods listed are:
1. Calendar days, and
  2. Maximum time periods.
- H.** The Department may grant or deny a license in less time than specified below.

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Table 1. Time-Frames

Name of Special License	Governing Rule	Administrative Review Time-frame	Substantive Time-frame	Review	Overall Time-frame
Aquatic Wildlife Stocking Permit	R12-4-410	10 days	170 days		180 days
Authorization for Use of Drugs on Wildlife	R12-4-309	20 days	70 days		90 days
Challenged Hunter Access/Mobility Permit	R12-4-217	1 day	29 days		30 days
Crossbow Permit	R12-4-216	1 day	29 days		30 days
Disabled Veteran’s License	R12-4-202	1 day	29 days		30 days
Fishing Permits	R12-4-310	10 days	20 days		30 days
Game Bird License	R12-4-414	10 days	20 days		30 days
Guide License	R12-4-208	10 days	20 days		30 days
License Dealer’s License	R12-4-105	10 days	20 days		30 days
Live Bait Dealer’s License	R12-4-411	10 days	20 days		30 days
Pioneer License	R12-4-201	1 day	29 days		30 days
Private Game Farm License	R12-4-413	10 days	20 days		30 days
Scientific Collecting Permit	R12-4-418	10 days	20 days		30 days
Small Game Depredation Permit	R12-4-113	10 days	20 days		30 days
Sport Falconry License	R12-4-422	10 days	20 days		30 days
Watercraft Agents	R12-4-509	10 days	20 days		30 days
White Amur Stocking License	R12-4-424	10 days	20 days		30 days
Wildlife Holding License	R12-4-417	10 days	20 days		30 days
Wildlife Rehabilitation License	R12-4-423	10 days	50 days		60 days
Wildlife Service License	R12-4-421	10 days	50 days		60 days
Zoo License	R12-4-420	10 days	20 days		30 days

**Historical Note**

Editorial correction subsections (F) through (G) (Supp. 78-5). Former Section R12-4-09 renumbered as Section R12-4-106 without change effective August 13, 1981 (Supp. 81-4). Repealed effective May 27, 1992 (Supp. 92-2). New Section adopted June 10, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-107. Bonus Point System**

A. For the purpose of this Section, the following definitions apply:

“Bonus point hunt number” means the hunt number assigned in a Commission Order for use by an applicant who is applying for a bonus point only.

“Loyalty bonus point” means a bonus point awarded to a person who has submitted a valid application for a hunt permit-tag or a bonus point for a specific genus identified in subsection (B) at least once annually for a consecutive five-year period.

B. The bonus point system grants a person one random number entry in each computer draw for antelope, bear, bighorn sheep, buffalo, deer, elk, javelina, or turkey for each bonus point that person has accumulated under this Section.

1. Each bonus point random number entry is in addition to the entry normally granted under R12-4-104.
2. When processing a “group” application, as defined under R12-4-104, the Department shall use the average number of bonus points accumulated by all persons in the group, rounded to the nearest whole number. If the average number of bonus points is equal to or greater than .5, the total will be rounded to the next higher number.
3. The Department shall credit a bonus point under an applicant’s Department identification number for the genus on the application.

4. The Department shall not transfer bonus points between persons or genera.

C. The Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application provided the following apply:

1. The application is unsuccessful in the computer draw or the application is for a bonus point only;
2. The application is not for a hunt permit-tag leftover after the computer draw and available on a first-come, first-served basis as established under R12-4-114; and
3. The applicant either provides the appropriate hunting license number on the application or submits an application and fees for the applicable license with the Hunt Permit-tag Application, as applicable.

D. An applicant who purchases a bonus point only shall:

1. Submit a valid Hunt Permit-tag Application, as prescribed under R12-4-104, with the assigned bonus point hunt number for the particular genus as the first-choice hunt number on the application. The Department shall reject any application that:
  - a. Indicates the bonus point only hunt number as any choice other than the first-choice, or
  - b. Includes any other hunt number on the application;
2. Include the applicable fees:
  - a. Application fee, and
  - b. Applicable license fee, required when the applicant does not possess a valid license at the time of application; and

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tive January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**Editor's Note**

For similar subject matter, see Section R12-4-411. This editor's note does not apply to the new Section adopted effective July 1, 1997 (Supp. 96-4).

**R12-4-204. Repealed****Historical Note**

Amended effective May 31, 1976 (Supp. 76-3). Correction, Historical Note Supp. 76-3 should read "Amended effective May 3, 1976" (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective March 20, 1981 (Supp. 81-2). Former Section R12-4-32 renumbered as Section R12-4-204 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Repealed by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-205. High Achievement Scout License**

- A.** A high achievement scout license is offered to a resident who is:
1. Eligible for a combination hunting and fishing license,
  2. Under 21 years of age, and
  3. A member of the Boy Scouts of the United States of America and has attained the rank of Eagle Scout, or
  4. A member of the Girl Scouts of the United States of America and has attained the Gold Award.
- B.** The high achievement scout license grants all of the hunting and fishing privileges of the youth combination hunting and fishing license and is only available at Department offices.
1. The license is valid for one year from the date of purchase or selected start date provided the date selected is no more than 60 calendar days from and after the date of purchase.
  2. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the high achievement scout license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- C.** An applicant for a high achievement scout license shall apply on an application form available from any Department office and on the Department's web site at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide all of the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D.** In addition to the application, an eligible applicant shall present with the application:

1. For an applicant who is a member of the Boy Scouts of the United States of America, any one of the following original documents:
    - a. A certification letter from the Boy Scouts of the United States of America stating that the applicant has attained the rank of Eagle Scout,
    - b. A Boy Scouts of the United States of America Eagle Scout Award Certificate, or
    - c. A Boy Scouts of the United States of America Eagle Scout wallet card.
  2. For an applicant who is a member of the Girl Scouts of the United States of America, any one of the following original documents:
    - a. A certification letter from the Girl Scouts of the United States of America stating that the applicant has completed the award,
    - b. A Girl Scouts of the United States of America Gold Award Certificate, or
    - c. A Girl Scouts Gold Award Certificate from the local council.
- E.** The Department shall deny a high achievement scout license to an applicant who:
1. Is not eligible for the license;
  2. Fails to comply with the requirements of this Section; or
  3. Provides false information during the application process.
- F.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Editorial correction subsection (A) (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective September 23, 1980 (Supp. 80-5). Former Section R12-4-33 renumbered as Section R12-4-205 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

**R12-4-206. General Hunting License; Exemption**

- A.** A general hunting license is valid for the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the general hunting license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- B.** The general hunting license is valid for one-year from:
1. The date of purchase when a person purchases the hunting license from a license dealer, as defined under R12-4-101;
  2. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
  3. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
  4. The selected start date when a person purchases the hunting license from a Department office or online. A person may select the start date for the hunting license provided

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**17-101. Definitions**

**A.** In this title, unless the context otherwise requires:

1. "Angling" means the taking of fish by one line and not to exceed two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not to exceed two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that may lawfully be taken by any one person during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who does any of the following:
  - (a) Advertises for guiding services.
  - (b) Holds himself out to the public for hire as a guide.
  - (c) Is employed by a commercial enterprise as a guide.
  - (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
  - (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
15. "Open season" means the time during which wildlife may be lawfully taken.
16. "Possession limit" means the maximum limit, in number or amount of wildlife, that may be possessed at

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one time by any one person.

17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:
  - (a) A member of the armed forces of the United States on active duty and who is stationed in:
    - (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
    - (ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.
  - (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
18. "Road" means any maintained right-of-way for public conveyance.
19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife.
21. "Taxidermist" means any person who engages for hire in the mounting, refurbishing, maintaining, restoring or preserving of any display specimen.
22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
25. "Youth" means a person who is under eighteen years of age.
26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

**B.** The following definitions of wildlife shall apply:

1. Aquatic wildlife are all fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
2. Game mammals are deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
3. Big game are wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
4. "Trophy" means:
  - (a) A mule deer buck with at least four points on one antler, not including the eye-guard point.
  - (b) A whitetail deer buck with at least three points on one antler, not including the eye-guard point.
  - (c) A bull elk with at least six points on one antler, including the eye-guard point and the brow tine point.
  - (d) A pronghorn (antelope) buck with at least one horn exceeding or equal to fourteen inches in total

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length.

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

**17-102. Wildlife as state property; exceptions**

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.

**17-231. General powers and duties of the commission**

**A.** The commission shall:

- 1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
- 2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
- 3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
- 4. Be responsible for the enforcement of laws for the protection of wildlife.
- 5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
- 6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.

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7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
  8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
  9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
- B.** The commission may:
1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
  2. Establish game management units or refuges for the preservation and management of wildlife.
  3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
  4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
  5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
  6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
  7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
  8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
  9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
  10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
  11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
  12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments

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and public testimony from interested persons.

13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.
  14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.
- C.** The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.
- D.** The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

**17-333. License classifications; fees; reduced-fee and complimentary licenses; annual report; review**

- A.** The commission shall prescribe by rule license classifications that are valid for the taking or handling of wildlife, fees for licenses, permits, tags and stamps and application fees.
- B.** The commission may temporarily reduce or waive any fee prescribed by rule under this title on the recommendation of the director.
- C.** The commission may reduce the fees of licenses and issue complimentary licenses, including the following:
1. A complimentary license to a pioneer who is at least seventy years of age and who has been a resident of this state for twenty-five or more consecutive years immediately before applying for the license. The pioneer license is valid for the licensee's lifetime, and the commission may not require renewal of the license.
  2. A complimentary license to a veteran of the armed forces of the United States who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a permanent service-connected disability rated as one hundred percent disabling.
  3. A license for a reduced fee to a veteran of the United States armed forces who has been a resident of this

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state for one year or more immediately before applying for the license and who receives compensation from the United States government for a service-connected disability.

4. A youth license for a reduced fee to a resident of this state who is a member of the boy scouts of America who has attained the rank of eagle scout or a member of the girl scouts of the USA who has received the gold award.
- D.** All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the game and fish fund established by section 17-261.
- E.** On or before December 31 of each year, the commission shall submit an annual report to the president of the senate, the speaker of the house of representatives, the chairperson of the senate natural resources, energy and water committee and the chairperson of the house of representatives energy, environment and natural resources committee, or their successor committees, that includes information relating to license classifications, fees for licenses, permits, tags and stamps and any other fees that the commission prescribes by rule. The joint legislative audit committee may assign a committee of reference to hold a public hearing and review the annual report submitted by the commission.

**17-363. Practice of taxidermy; registration required; rules; register; revocation; suspension; civil penalty**

- A.** A person shall not engage in the business of a taxidermist for hire until that person registers with the department. The department shall adopt rules to allow a person to register pursuant to this section.
- B.** A taxidermist shall:
1. Keep a register of the names and addresses of persons who furnish raw and unmounted specimens, the taker's tag or license number and the date and number of each species of wildlife received.
  2. Exhibit the register on request of an authorized representative of the department.
  3. Maintain the register for five years after the date the wildlife was received.
  4. File a copy of the register in English with the department on or before January 31 of each year.
- C.** After a public hearing, the commission may revoke or suspend the registration of a person who violates this section and deny the person the right to register with the department as a taxidermist for hire under subsection A of this section for a period not to exceed one year.
- D.** A person who violates this section is subject to a civil penalty of one hundred fifty dollars.

**41-1005. Exemptions**

- A.** This chapter does not apply to any:
1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.
  2. Order or rule of the Arizona game and fish commission that does the following:
    - (a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.
    - (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.
    - (c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.

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3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.
4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.
5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.
6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.
7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital, if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.
8. Form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form.
9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.
10. Fees prescribed by section 6-125.
11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.
12. Fees established under section 3-1086.
13. Fees established under sections 41-4010 and 41-4042.
14. Rule or other matter relating to agency contracts.
15. Fees established under section 32-2067 or 32-2132.
16. Rules made pursuant to section 5-111, subsection A.
17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.
18. Fees or charges established under section 41-511.05.
19. Emergency medical services protocols except as provided in section 36-2205, subsection B.
20. Fee schedules established pursuant to section 36-3409.
21. Procedures of the state transportation board as prescribed in section 28-7048.
22. Rules made by the state department of corrections.
23. Fees prescribed pursuant to section 32-1527.
24. Rules made by the department of economic security pursuant to section 46-805.
25. Schedule of fees prescribed by section 23-908.
26. Procedure that is established pursuant to title 23, chapter 6, article 6.
27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona

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commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.

28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.
  29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.
  30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.
  31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.
  32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.
  33. Rules made by the Arizona department of agriculture to adopt, implement and administer the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252) as provided by title 3, chapter 3, article 4.1.
  34. Calculations performed by the department of economic security associated with the adjustment of the sliding fee scale and formula for determining child care assistance pursuant to section 46-805.
- B.** Notwithstanding subsection A, paragraph 21 of this section, at such time as the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.
- C.** Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall:
1. Prepare a notice and follow formatting guidelines prescribed by the secretary of state.
  2. Prepare the rulemaking exemption notices pursuant to chapter 6.2 of this title.
  3. File a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.
- D.** Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.
- E.** Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the

Taxidermy Registration Rulemaking  
Statutory Authority

circumstances, for notice of and opportunity for comment on the policies proposed for adoption.

- F.** Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment. The state board of education shall consider the fiscal impact of any proposed rule pursuant to this subsection.
- G.** Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board for charter schools, except that the board shall adopt policies or rules for the board and the charter schools sponsored by the board that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any policy or rule, the board shall provide at least two opportunities for public comment. The state board for charter schools shall consider the fiscal impact of any proposed rule pursuant to this subsection.

## TAXIDERMY RULEMAKING

### DEFINITIONS

#### 17-101. Definitions

A. In this title, unless the context otherwise requires:

1. "Angling" means the taking of fish by one line and not to exceed two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not to exceed two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that may lawfully be taken by any one person during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who does any of the following:
  - (a) Advertises for guiding services.
  - (b) Holds himself out to the public for hire as a guide.
  - (c) Is employed by a commercial enterprise as a guide.
  - (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
  - (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
15. "Open season" means the time during which wildlife may be lawfully taken.
16. "Possession limit" means the maximum limit, in number or amount of wildlife, that may be possessed at

## TAXIDERMY RULEMAKING

### DEFINITIONS

one time by any one person.

17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person who is:
  - (a) A member of the armed forces of the United States on active duty and who is stationed in:
    - (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
    - (ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.
  - (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
18. "Road" means any maintained right-of-way for public conveyance.
19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife.
21. "Taxidermist" means any person who engages for hire in the mounting, refurbishing, maintaining, restoring or preserving of any display specimen.
22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
25. "Youth" means a person who is under eighteen years of age.
26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

**B.** The following definitions of wildlife shall apply:

1. Aquatic wildlife are all fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
2. Game mammals are deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
3. Big game are wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
4. "Trophy" means:
  - (a) A mule deer buck with at least four points on one antler, not including the eye-guard point.
  - (b) A whitetail deer buck with at least three points on one antler, not including the eye-guard point.
  - (c) A bull elk with at least six points on one antler, including the eye-guard point and the brow tine point.
  - (d) A pronghorn (antelope) buck with at least one horn exceeding or equal to fourteen inches in total

## TAXIDERMY RULEMAKING

### DEFINITIONS

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

#### **R12-4-101. Definitions**

- A.** In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

“Bobcat seal” means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

“Bonus point” means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

“Certificate of insurance” means an official document issued by the sponsor's and sponsor's vendors or subcontractors insurance carrier providing insurance against claims for injury to persons or damage to property which may arise from or in connection with the solicitation or event as determined by the Department.

“Commission Order” means a document adopted by the Commission that does one or more of the following:

- Open, close, or alter seasons,
- Open areas for taking wildlife,
- Set bag or possession limits for wildlife,
- Set the number of permits available for limited hunts, or
- Specify wildlife that may or may not be taken.

“Day-long” means the 24-hour period from one midnight to the following midnight.

“Department property” means those buildings or real property and wildlife areas under the jurisdiction of the

## TAXIDERMY RULEMAKING

### DEFINITIONS

Arizona Game and Fish Commission.

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

“Hunt area” means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

“Hunt number” means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

“Hunt permits” means the number of hunt permit-tags made available to the public as a result of a Commission Order.

“Hunt permit-tag” means a tag for a hunt for which a Commission Order has assigned a hunt number.

“Identification number” means the number assigned to each applicant or license holder by the Department, as established under R12-4-111.

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

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

“Management unit” means an area established by the Commission for management purposes.

“Nonpermit-tag” means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

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

“Proof of purchase,” for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

“Restricted nonpermit-tag” means a tag issued for a supplemental hunt as established under R12-4-115.

“Solicitation” means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

“Solicitation material” means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

“Sponsor” means the person or persons conducting a solicitation or event.

“Stamp” means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

“Tag” means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

“Waterdog” means the larval or metamorphosing stage of a salamander.

## TAXIDERMY RULEMAKING

### DEFINITIONS

“Wildlife area” means an area established under 12 A.A.C. 4, Article 8.

**B.** If the following terms are used in a Commission Order, the following definitions apply:

“Antlered” means having an antler fully erupted through the skin and capable of being shed.

“Antlerless” means not having an antler, antlers, or any part of an antler erupted through the skin.

“Bearded turkey” means a turkey with a beard that extends beyond the contour feathers of the breast.

“Buck antelope” means a male pronghorn antelope.

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

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

“Bull elk” means an antlered elk.

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

“Ram” means any male bighorn sheep.

“Rooster” means a male pheasant.

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

**BOARD OF OSTEOPATHIC EXAMINERS**

Title 4, Chapter 23, Article 1, General Provisions; Article 2, Licensing



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 31, 2019

**SUBJECT: BOARD OF OSTEOPATHIC EXAMINERS**  
Title 4, Chapter 23, Board of Osteopathic Examiners in Medicine and Surgery

**Amend:** R4-22-102, Table 1, R4-22-201, R4-22-202, R4-22-207

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This rulemaking from the Board of Osteopathic Examiners in Medicine and Surgery (Board) seeks to amend rules in Title 4, Chapter 23. The Board seeks to amend these rules to comply with three recent statutory changes:

- **Laws 2016, Chapter 137:** the legislature adopted the Interstate Medical Licensure Compact. In doing so, it created a new temporary license to allow an applicant for Arizona licensure to obtain a non-renewable, temporary license to practice osteopathic medicine in Arizona while the application is processed. A.R.S. § 32-1834 authorizes a fee for the temporary license. This rulemaking establishes the fee and the timeframe for the Board to act on an application for temporary licensure;
- **Laws 2017, Chapter 265:** the legislature required all applicants for licensure to submit a full set of fingerprints to the Board for the purpose of obtaining a federal and state criminal background check. A fee to process fingerprints is already authorized under A.R.S. § 41-1750. This rulemaking adds the fingerprint requirement to the rules and adds the fee for processing the fingerprints; and
- **Laws 2018, Chapter 1:** the legislature added A.R.S. § 32-3284.02, which requires a health professional authorized to prescribe or dispense schedule II controlled substances to complete three hours of opioid-related, substance use disorder-related, or

addiction-related continuing medical education (CME) during each license renewal cycle. This rulemaking establishes the new CME requirement.

The Board obtained three exemptions from the rulemaking moratorium in emails dated April 21, June 29, and October 19, 2017.

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

Yes. The Board cites to general and specific authority for the rules.

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

Yes. The rulemaking establishes a new fee for a temporary license to practice osteopathic medicine in Arizona. This new fee is authorized under A.R.S. § 32-1834(F).

**3. Summary of the agency's economic impact analysis:**

The Board is amending these rules to address three recent statutory changes. Any economic impact is the result of the statutory changes and not the direct result of the rulemaking. Under Laws 2016, Chapter 137, the legislature adopted the Interstate Medical Licensure Compact and created a new, temporary license to allow an applicant for Arizona licensure to obtain a non-renewable, temporary license to practice osteopathic medicine in Arizona while the application for full licensure is processed. Under Laws 2017, Chapter 265, the legislature required all applicants for licensure to submit to the Board a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. Under Laws 2018, Chapter 1, the legislature requires a health professional authorized to prescribe or dispense schedule II controlled substances to complete three hours of opioid-related, substance use disorder-related, or addiction-related continuing medical education (CME) during each license renewal cycle.

Stakeholders include the Board, applicants for licensure, and licensees. There are currently 3,451 osteopathic licensees. During FY 2018, the Board received 16 applications for a temporary license.

Under the statute, no one is required to obtain a temporary license, so no one is required to pay the fee established in this rulemaking.

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

The Board indicates that the rulemaking has a minimal economic impact, so no less intrusive or less costly alternative methods were considered.

5. **What are the economic impacts on stakeholders?**

The Board incurred the cost of making these rules and will incur the cost of implementing and enforcing them. The costs are offset by the benefit of having rules consistent with applicable statutes. The Board is the only state agency directly affected by the rulemaking; no political subdivision is directly affected. The Board believes the rulemaking will have no impact on private or public employment.

The \$250 fee for a temporary license is a voluntary assumed cost of the rulemaking. The cost of obtaining a full set of fingerprints and submitting them for a criminal records check is a cost listed in a statute. There is no cost associated with redirecting three hours of CME, as required by statute.

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

Not applicable. The Board indicates that it received no comments and no one attended the oral proceeding held on May 18, 2019.

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

The Board made two clarifying changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking:

- R4-22-202(B)(3): the requirement that an applicant have each entity at which the applicant obtained practice experience submit a verification form to the Board was deleted and a simpler requirement that the applicant submit a list of entities from which practice experience was obtained was added as R4-22-202(A)(4); and
- R4-22-202(B)(4): the time limitation for passing an approved licensing examination was deleted.

These changes do not result in rules that are substantially different pursuant to A.R.S. § 41-1025.

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

Not applicable. Federal law applies to the provision of health care but there is no federal law that addresses the subject matter of these rules.

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

Yes. The licenses listed in Table 1 qualify as general permits under A.R.S. § 41-1037.

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

No. The Board did not review or rely upon any study in conducting this rulemaking.

11. **Conclusion**

The Board is conducting this rulemaking to amend its rules in response to three recent statutory changes. The resulting rules will comply with state law and will be clear, concise, understandable, and effective. The Board accepts the usual 60-day delayed effective date for the rules. Council staff recommends approval of the rulemaking.



Governor  
Douglas A. Ducey

**ARIZONA BOARD OF OSTEOPATHIC EXAMINERS  
IN MEDICINE AND SURGERY**

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Martin B. Reiss, D.O.  
Christopher Spiekerman, D.O.  
Jeffrey H. Burg

**Executive Director**  
Justin Bohall

May 20, 2019

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

**Re: A.A.C. Title 4. Professions and Occupations  
Chapter 23. Board of Osteopathic Examiners in Medicine and Surgery**

Dear Ms. Sornsin:

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

- A. Close of record date: The rulemaking record was closed on May 18, 2019, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report.
- C. New fee: The rulemaking establishes a new fee for a temporary license to practice osteopathic medicine in Arizona. The new fee is specifically authorized under A.R.S. § 32-1834.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
  - 1. Cover letter signed by the Executive Director;
  - 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
  - 3. Economic, Small Business, and Consumer Impact Statement

Kind Regards,

  
Justin Bohall  
Executive Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

**PREAMBLE**

<b><u>1. Articles, Parts, and Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
R4-22-102	Amend
Table 1	Amend
R4-22-201	Amend
R4-22-202	Amend
R4-22-207	Amend

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

Authorizing statute: A.R.S. § 32-1803(C)(1)

Implementing statute: A.R.S. §§ 32-1822, 32-1834, and 32-3248.02

**3. The effective date for the rules:**

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 723, March 22, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 871, April 12, 2019

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

Name: Justin Bohall, Executive Director

Address: Board of Examiners in Osteopathic Medicine and Surgery  
1740 W Adams Street, Suite 2410  
Phoenix, AZ 85007

Telephone: (602) 771-2522

Fax: (480) 657-7715

E-mail: Justin.bohall@azdo.gov

Web site: www.azdo.gov

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

The Board is amending its rules to address three recent statutory changes. Under Laws 2016, Chapter 137, the legislature adopted the Interstate Medical Licensure Compact (See A.R.S. §§ 32-3241 to 32-3246) and created a new, temporary license to allow an applicant for Arizona licensure to obtain a non-renewable, temporary license to practice osteopathic medicine in Arizona while the application for full licensure is processed. A.R.S. § 32-1834 authorizes the Board to establish a fee for the temporary license. This rulemaking establishes the fee and as required under A.R.S. § 41-1073, establishes the time frame within which the Board will act on an application for a temporary license.

Under Laws 2017, Chapter 265, the legislature required all applicants for licensure to submit to the Board a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. This rulemaking places the fingerprint requirement into rule and adds the fee for processing the fingerprints.

Under Laws 2018, Chapter 1, the legislature added A.R.S. § 32-3248.02, which requires a health professional authorized to prescribe or dispense schedule II controlled substances to complete three hours of opioid-related, substance use disorder-related, or addiction-related continuing medical education during each license renewal cycle. This rulemaking establishes the new CME requirement.

Exemptions from Executive Order 2017-02 for the purpose of this rulemaking were provided by Mara Mellstrom, Policy Advisor in the Office of the Governor, in e-mails dated April 21, June 29, and October 19, 2017.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or**

**review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

Under statute, no one is required to obtain a temporary license so no one is required to pay the fee established in this rulemaking. An osteopathic physician voluntarily obtains a temporary license and pays the fee because the osteopathic physician believes the cost is outweighed by the benefit of being able to practice medicine while the application for full licensure is processed.

An applicant will incur the expense of submitting to the Board a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. This is a cost the legislature determined is offset by the concern for public health and safety.

The impact of the change to the CME requirement will be minimal. Licensees are not being required to obtain an additional hour of CME. Rather, they are being required simply to ensure three of the 40 statutorily required CME hours address opioid-related, substance use disorder-related, or addiction-related prescribing.

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

To reduce the regulatory burden on applicants, the Board made two non-substantive changes between the proposed and final rulemaking:

- R4-22-202(B)(3): The requirement that an applicant have each entity at which the applicant obtained practice experience submit a verification form to the Board was deleted and a simpler requirement that the applicant submit a list of entities from which practice experience was obtained was added as R4-22-202(A)(4).
- R4-22-202(B)(4): The time limitation for passing an approved licensing examination was deleted.

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

The Board received no comments regarding the rulemaking. No one attended the oral proceeding on May 18, 2019.

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

None

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

The licenses listed in Table 1 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

No rule in the rulemaking is more stringent than federal law. Federal law applies to the provision of health care but no federal law addresses the subject matter of this rulemaking.

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

No analysis was submitted.

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

None

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

No rule in the rulemaking was previously made, amended, or repealed as an emergency rule.

**15. The full text of the rules follows:**



**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

**ARTICLE 1. GENERAL PROVISIONS**

Section

R4-22-102. Fees and Charges

Table 1. Time Frames (in days)

**ARTICLE 2. LICENSING**

Section

R4-22-201. Application Required

R4-22-202. Determining Qualification for Licensure

R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete

**ARTICLE 1. GENERAL PROVISIONS**

**R4-22-102. Fees and Charges**

- A. Under the specific authority provided by A.R.S. §§ 32-1826(A) and 32-1871(A)(5), the Board establishes and shall collect the following fees for the Board’s licensing activities:
1. Application for license to practice osteopathic medicine, \$400;
  2. Application for a temporary license to practice osteopathic medicine, \$250;
  - ~~2-3.~~ Issuance of initial license, \$180 (prorated);
  - ~~3-4.~~ Biennial renewal of license, \$636 plus the penalty and reimbursement fees specified in A.R.S. § 32-1826(B), if applicable;
  - ~~4-5.~~ Locum tenens registration, \$300;
  - ~~5-6.~~ Annual registration of an approved internship, residency, or clinical fellowship program or short-term residency program, \$50;
  - ~~6-7.~~ Teaching license, \$318;
  - ~~7-8.~~ Five-day educational teaching permit, \$106; and
  - ~~8-9.~~ Annual registration to dispense drugs and devices, \$240 (initial registration fee is prorated).
- B. Under the specific authority provided by A.R.S. § 32-1826(C), the Board establishes and shall collect the following charges for services provided by the Board:
1. ~~Verification of~~ Verifying a license to practice osteopathic medicine issued by the Board and copy of licensee’s complaint history, \$10;
  2. ~~Issuance of~~ Issuing a duplicate license, \$10;
  3. Processing fingerprints for a state and federal criminal records check, \$50;
  - ~~3-4.~~ ~~List~~ Providing a list of physicians licensed by the Board, \$25.00 if for non-commercial use or \$100 if for commercial use;
  - ~~4-5.~~ Copying records, documents, letters, minutes, applications, and files, 25¢ per page;
  - ~~5-6.~~ ~~Copy of~~ Copying an audio tape, \$35.00; and
  - ~~6-7.~~ ~~Digital~~ Providing information in a digital medium not requiring programming, \$100.
- C. Except as provided under A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

**Table 1. Time Frames (in days)**

Type of License	Statutory Authority	Overall Time Frame	Administrative Completeness	Substantive Review

			Time Frame	Time Frame
License	A.R.S. § 32-1822	120	30	90
License Renewal	A.R.S. § 32-1825	120	30	90
<u>Temporary License</u>	<u>A.R.S. § 32-1834</u>	<u>30</u>	<u>20</u>	<u>10</u>
90-day Locum Tenens Registration	A.R.S. § 32-1823	60	30	30
One-year Renewable Training Permit	A.R.S. § 32-1829(A)	60	30	30
Short-term Training Permit	A.R.S. § 32-1829(C)	60	30	30
One-year Training Permit at Approved School or Hospital	A.R.S. § 32-1830	60	30	30
Two-year Teaching License	A.R.S. § 32-1831	60	30	30
Registration to Dispense Drugs and Devices	A.R.S. § 32-1871	90	30	60
Renewal of Registration to Dispense Drugs and Devices	A.R.S. §§ 32-1826(A)(11) and 32-1871	60	30	30
Approval of Educational Program for Medical Assistants	A.R.S. § 32-1800(17)	60	30	30
Retired Status	A.R.S. § 32-1832	90	30	60

## ARTICLE 2. LICENSING

### **R4-22-201. Application Required**

An individual or entity that seeks a license or other approval from the Board shall complete and submit an application form prescribed by the Board. The Board has prescribed the following application forms, which are available from the Board office or web site:

1. License,
2. Temporary license,
- ~~2.3.~~ License renewal,

- ~~3-4.~~ Locum tenens registration,
- ~~4-5.~~ Initial registration to dispense,
- ~~5-6.~~ Registration to dispense renewal,
- ~~6-7.~~ Renewable one-year post-graduate training permit,
- ~~7-8.~~ Renewal of post-graduate training permit,
- ~~8-9.~~ Short-term training permit,
- ~~9-10.~~ Two-year teaching license, and
- ~~10-11.~~ Approval of an educational program for medical assistants.

**R4-22-202. Determining Qualification for Licensure**

**A.** To obtain a license, an applicant shall submit:

- 1. No change
- 2. No change
- 3. No change
- 4. A list of each health care facility or employer at which the applicant obtained practice experience. If the applicant has not passed an examination approved under R4-22-203 within the last seven years, the Board may obtain verification of practice experience from the health care facilities or employers listed for the last seven years;

~~4-5.~~ No change

6. A full set of fingerprints and the charge specified in R4-22-102(B);

~~5-7.~~ No change

~~6-8.~~ No change

**B.** No change

- 1. No change
- 2. No change
- 3. ~~Practice Experience Verification form for at least seven of the last 10 years submitted by each health care facility or employer at which the applicant obtained experience;~~
- ~~4-3.~~ Verification of passing ~~the medical licensure~~ an examination approved under R4-22-203 ~~if the examination was passed within the last seven years~~ submitted by the examining entity; and

~~5-4.~~ No change

**C.** No change

**D.** No change

- 1. No change

2. No change
3. No change

**E.** No change

1. No change
2. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change

**F.** No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change

**R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete**

**A.** No change

1. At least 24 hours are obtained by completing CME classified by the AOA as Category 1A; ~~and,~~
2. No more than 16 hours are obtained by completing CME classified as American Medical Association Category 1 approved by an ACCME-accredited CME provider; ~~and~~
3. At least the number of CME hours specified under A.R.S. § 32-3248.02 address opioid-related, substance use disorder-related, or addiction-related prescribing and are obtained under subsection (A)(1) or (2).

**B.** No change

**C.** No change

1. No change
  - a. No change
  - b. No change
    - i. No change

- ii. No change
  - iii. No change
  - iv. No change
  - v. No change
  - vi. No change
- 2. No change
    - a. No change
    - b. No change
  - 3. No change
- D.** No change
- 1. No change
  - 2. No change
  - 3. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
      - i. No change
      - ii. No change
- E.** No change
- 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
- F.** No change
- 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
- G.** No change
- 1. No change
  - 2. No change
  - 3. No change

4. No change

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND**  
**SURGERY**

1. Identification of the rulemaking:

The Board is amending its rules to address three recent statutory changes. Under Laws 2016, Chapter 137, the legislature adopted the Interstate Medical Licensure Compact (See A.R.S. §§ 32-3241 to 32-3246) and created a new, temporary license to allow an applicant for Arizona licensure to obtain a non-renewable, temporary license to practice osteopathic medicine in Arizona while the application for full licensure is processed. A.R.S. § 32-1834 authorizes the Board to establish a fee for the temporary license. This rulemaking establishes the fee and as required under A.R.S. § 41-1073, establishes the time frame within which the Board will act on an application for a temporary license.

Under Laws 2017, Chapter 265, the legislature required all applicants for licensure to submit to the Board a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. This rulemaking places the fingerprint requirement into rule and adds the charge for processing the fingerprints.

Under Laws 2018, Chapter 1, the legislature added A.R.S. § 32-3248.02, which requires a health professional authorized to prescribe or dispense schedule II controlled substances to complete three hours of opioid-related, substance use disorder-related, or addiction-related continuing medical education during each license renewal cycle. This rulemaking establishes the new CME requirement.

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

Until the rulemaking is completed, the Board's rules will be inconsistent with statute.

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

It is not good government and potentially causes confusion for applicants and licensees to have rules that are inconsistent with statute.

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

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

When the rulemaking is completed, the Board's rules will be consistent with statute.

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

Under statute, no one is required to obtain a temporary license so no one is required to pay the fee established in this rulemaking. An osteopathic physician voluntarily obtains a temporary license and pays the fee because the osteopathic physician believes the cost is outweighed by the benefit of being able to practice medicine while the application for full licensure is processed.

An applicant will incur the expense of submitting to the Board a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. This is a cost the legislature determined is offset by the concern for public health and safety.

The impact of the change to the CME requirement will be minimal. Licensees are not being required to obtain an additional hour of CME. Rather, they are being required to ensure three of the 40 statutorily required CME hours address opioid-related, substance use disorder-related, or addiction-related prescribing.

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

Name: Justin Bohall, Executive Director

Address: Board of Examiners in Osteopathic Medicine and Surgery  
1740 W Adams Street, Suite 2410  
Phoenix, AZ 85007

Telephone: (602) 771-2522

Fax: (480) 657-7715

E-mail: Justin.bohall@azdo.gov

Web site: [www.azdo.gov](http://www.azdo.gov)

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

Applicants for licensure, licensees, and the Board will be directly affected by, bear the costs of, or directly benefit from this rulemaking.

There currently are 3,451 osteopathic licensees. During FY2018, the Board received 16 applications for a temporary license. The 16 individuals voluntarily paid the \$250 for the temporary license. During FY2018, the Board received two additional applications. The 18 individuals who applied for licensure in FY2018 incurred the cost of having a full set of fingerprints made and the \$50 charge for criminal-record processing of the fingerprints. These expenses result primarily from statute rather than rule.

One hour of category 1A CME costs approximately \$20 so the three hours regarding opioid-related, substance use disorder-related, or addiction-related prescribing cost \$60. However, this is not a new or additional expense. It is simply a redirection of an existing expense.

The Board incurred the cost of making these rules and will incur the cost of implementing and enforcing them. These costs are offset by the benefit of having rules consistent with statute.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only state agency directly affected by the rulemaking. Its costs and benefits are listed under item 4. The Board will not need to employ an additional full-time employee to implement the rule changes.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision is directly affected by the rulemaking.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Osteopathic physicians are the only businesses directly affected by the rulemaking. Their costs and benefits are listed under item 4.

6. Impact on private and public employment:

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

7. Impact on small businesses<sup>2</sup>:

- a. Identification of the small business subject to the rulemaking:

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(21).

Osteopathic physicians are small businesses subject to the rulemaking.

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

The \$250 fee for a temporary license is a voluntarily assumed cost of the rulemaking. The cost of obtaining a full set of fingerprints and submitting them for a criminal records check is a cost of statute rather than rule. There is no cost associated with redirecting three hours of the CME, as required by statute.

c. Description of methods that may be used to reduce the impact on small businesses:

Because all osteopathic physicians are small businesses and because the cost of complying with this rulemaking is minimal, no method may be used to reduce the impact on small businesses.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private persons or consumers are directly affected by the rulemaking. Consumers of osteopathic services may be indirectly affected.

9. Probable effects on state revenues:

Ten percent of the fees collected by the Board are required to be deposited in the state's general fund. Sixteen individuals paid \$250 for a temporary license in FY2018. This resulted in an additional \$400 being deposited in the state's general fund.

10. Less intrusive or less costly alternative methods considered:

Because of the minimal economic impact of the rulemaking, no less intrusive or less costly alternative method was considered.

#### **R4-22-202. Determining Qualification for Licensure**

- A.** To obtain a license, an applicant shall submit:
1. The application form specified in R4-22-201;
  2. The proof required under A.R.S. § 32-1822(A);
  3. A list of all Board-certified specializations, the certifying entity, and a copy of each certification or letter verifying specialization;
  4. A malpractice claim or suit questionnaire for each instance of medical malpractice in which there was an award, settlement, or payment;
  5. A passport-size picture taken within the last 60 days; and
  6. The application fee required under R4-22-102(A).
- B.** In addition to the materials required under subsection (A), an applicant shall have the following information submitted directly to the Board by the specified entity:
1. Professional Education Verification form or an official transcript submitted by the osteopathic college from which the applicant graduated;
  2. Verification of Postgraduate Training form submitted by each postgraduate facility or program at which the applicant trained;
  3. Practice Experience Verification form for at least seven of the last 10 years submitted by each health care facility or employer at which the applicant obtained experience;
  4. Verification of passing the medical licensure examination if the examination was passed within the last seven years submitted by the examining entity; and
  5. Verification of licensure form submitted by every state in which the applicant is or has been licensed as an osteopathic physician.
- C.** If an applicant has established a credentials portfolio with the FCVS or AOIA, the applicant may request that the FCVS forward to the Board some or all of the materials required under subsection (B).
- D.** The Board shall conduct a substantive review of the information submitted under subsections (A) and (B) and determine whether the applicant is qualified for licensure by virtue of:
1. Possessing the knowledge and skills necessary to practice medicine safely and skillfully;
  2. Demonstrating a history of professional conduct; and
  3. Possessing the physical, mental, and emotional fitness to practice medicine.

- E.** If the substantive review referenced in subsection (D) does not yield sufficient information for the Board to determine whether an applicant is qualified for licensure, the Board shall request that the applicant appear before the Board for an interview.
1. The Board shall conduct an application interview in the same manner as an informal hearing conducted under A.R.S. § 32-1855 and shall accord the applicant the same rights as a respondent.
  2. In conjunction with an application interview, the Executive Director or Board may require that the applicant, at the applicant's expense:
    - a. Provide additional documentation,
    - b. Submit to a physical or psychological examination,
    - c. Submit to a practice assessment evaluation,
    - d. Pass an approved special purposes competency examination listed in R4-22-203(A)(3), or
    - e. Fulfill any combination of the requirements listed in subsections (E)(2)(a) through (d).
- F.** If the substantive review referenced in subsection (D) reveals that an applicant has been subject to disciplinary action or criminal conviction, the Board shall consider the following factors to determine whether the applicant has been rehabilitated from the conduct underlying the disciplinary action or criminal conviction:
1. Nature of the disciplinary or criminal action including charges and final disposition;
  2. Whether all terms of court-ordered sentencing or Board-issued order were satisfied;
  3. Whether the disciplinary action or criminal conviction was set aside, dismissed with prejudice, or reduced;
  4. Whether a diversion program was entered and completed;
  5. Whether the circumstances, relationships, or personal attributes that caused or contributed to the underlying conduct changed;
  6. Personal and professional references attesting to rehabilitation; and
  7. Other information the Board determines demonstrates whether the applicant has been rehabilitated.

**R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete**

- A.** Under A.R.S. § 32-1825(B), a licensee is required to obtain 40 hours of Board-approved CME in the two years before license renewal. The Board shall approve the CME of a licensee if the CME complies with the following:
1. At least 24 hours are obtained by completing CME classified by the AOA as Category 1A; and

2. No more than 16 hours are obtained by completing CME classified as American Medical Association Category 1 approved by an ACCME-accredited CME provider.
- B.** A licensee may fulfill 40 hours of the CME requirement for a biennial license renewal period by participating in an approved postgraduate training program or preceptorship during that biennial license renewal period.
- C.** The Board shall accept the following documentation as evidence of compliance with the CME requirement:
1. For a CME under subsection (A)(1):
    - a. The AOA printout of the licensee's CME, or
    - b. A copy of the certificate of attendance from the provider of the CME showing:
      - i. Licensee's name,
      - ii. Title of the CME,
      - iii. Name of the provider of the CME,
      - iv. Category of the CME,
      - v. Number of hours in the CME, and
      - vi. Date of attendance;
  2. For a CME under subsection (A)(2):
    - a. A copy of the certificate of attendance from the provider of the CME showing the information listed in subsection (C)(1)(b); or
    - b. A specialty board's printout showing a licensee's completion of CME.
  3. For a CME under subsection (B), either a letter from the Director of Medical Education or a certificate of completion for the approved postgraduate training program or preceptorship.
- D.** Waiver of CME requirements. To obtain a waiver under A.R.S. § 32-1825(C) of the CME requirements, a licensee shall submit to the Board a written request that includes the following:
1. The period for which the waiver is requested,
  2. CME completed during the current license period and the documentation required under subsection (C), and
  3. Reason that a waiver is needed and the applicable documentation:
    - a. For military service. A copy of current orders or a letter on official letterhead from the licensee's commanding officer;
    - b. For absence from the United States. A copy of pages from the licensee's passport showing exit and reentry dates;

- c. For disability. A letter from the licensee's treating physician stating the nature of the disability; or
  - d. For circumstances beyond the licensee's control:
    - i. A letter from the licensee stating the nature of the circumstances, and
    - ii. Documentation that provides evidence of the circumstances.
- E.** The Board shall grant a request for waiver of CME requirements that:
  - 1. Is based on a reason listed in subsection (D)(3),
  - 2. Is supported by the documentation required under subsection (D)(3),
  - 3. Is filed no sooner than 60 days before and no later than 30 days after the license renewal date, and
  - 4. Will promote the safe and professional practice of osteopathy in this state.
- F.** Extension of time to complete CME requirements. To obtain an extension of time under A.R.S. § 32-1825(C) to complete the CME requirements, a licensee shall submit to the Board a written request that includes the following:
  - 1. Ending date of the requested extension,
  - 2. CME completed during the current license period and the documentation required under subsection (C),
  - 3. Proof the licensee is registered for additional CME sufficient to enable the licensee to complete all CME required for license renewal before the end of the requested extension, and
  - 4. Licensee's attestation that the CME obtained under the extension will be reported only to fulfill the current license renewal requirement and will not be reported on a subsequent license renewal application.
- G.** The Board shall grant a request for an extension that:
  - 1. Specifies an ending date no later than May 1 following the license renewal date,
  - 2. Includes the documentation and attestation required under subsection (F),
  - 3. Is submitted no sooner than 60 days before and no later than 30 days after the license renewal date, and
  - 4. Will promote the safe and professional practice of osteopathy in this state.

### 32-1800. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid license to practice medicine and includes the license of a licensee who has been placed on probation or on whose license the board has placed restrictions.
2. "Address of record" means either:
  - (a) The address where a person who is regulated pursuant to this chapter practices medicine or is otherwise employed.
  - (b) The residential address of a person who is regulated pursuant to this chapter if that person has made a written request to the board that the board use that address as the address of record.
3. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another licensed health care practitioner to assume continuity of the patient's care at any point in the course of treatment.
4. "Administrative warning" means a disciplinary action by the board in the form of a written warning to a physician of a violation of this chapter involving patient care that the board determines falls below the community standard.
5. "Approved postgraduate training program" means that an applicant for licensure successfully completed training when the hospital or other facility in which the training occurred was approved for a postgraduate internship, residency or fellowship by the American osteopathic association or by the accreditation council for graduate medical education.
6. "Approved school of osteopathic medicine" means a school or college offering a course of study that, on successful completion, results in the awarding of the degree of doctor of osteopathy and whose course of study has been approved or accredited by the American osteopathic association.
7. "Board" means the Arizona board of osteopathic examiners in medicine and surgery.
8. "Decree of censure" means a formal written reprimand by the board of a physician for a violation of this chapter that constitutes a disciplinary action against a physician's license.
9. "Direct supervision" means that a physician is within the same room or office suite as the unlicensed person in order to be available for consultation regarding those tasks the unlicensed person performs pursuant to section 32-1859.
10. "Dispense" means the delivery by a physician of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.
11. "Doctor of osteopathy" means a person who holds a license, registration or permit to practice medicine pursuant to this chapter.
12. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician and the natural and adopted children, father, mother, brothers and sisters of the physician's spouse.
13. "Inappropriate fee" means a fee that is not supported by documentation of time, complexity or extreme skill required to perform the service.
14. "Investigative hearing" means a meeting between the board and a physician to discuss issues set forth in the investigative hearing notice and during which the board may hear statements from board staff, the complainant, the physician and witnesses, if any.
15. "Letter of concern" means an advisory letter to notify a physician that while there is insufficient evidence to support disciplinary action against the physician's license there is sufficient evidence for the board to notify the physician of its concern.
16. "Limited license" means a license that restricts the scope and setting of a licensee's practice.

17. "Medical assistant" means an unlicensed person who has completed an educational program approved by the board, who assists in a medical practice under the supervision of a doctor of osteopathic medicine and who performs delegated procedures commensurate with the assistant's education and training but who does not diagnose, interpret, design or modify established treatment programs or violate any statute.

18. "Medicine" means osteopathic medicine as practiced by a person who receives a degree of doctor of osteopathy.

19. "Physician" means a doctor of osteopathy who holds a license, a permit or a locum tenens registration to practice osteopathic medicine pursuant to this chapter.

20. "Practice of medicine" or "practice of osteopathic medicine" means all of the following:

(a) To examine, diagnose, treat, prescribe for, palliate, prevent or correct human diseases, injuries, ailments, infirmities and deformities, physical or mental conditions, real or imaginary, by the use of drugs, surgery, manipulation, electricity or any physical, mechanical or other means as provided by this chapter.

(b) Suggesting, recommending, prescribing or administering any form of treatment, operation or healing for the intended palliation, relief or cure of any physical or mental disease, ailment, injury, condition or defect.

(c) The practice of osteopathic medicine alone or the practice of osteopathic surgery or osteopathic manipulative therapy, or any combination of either practice.

21. "Specialist" means a physician who has successfully completed postdoctoral training in an approved postgraduate training program, an approved preceptorship or an approved residency or who is board certified by a specialty board approved by the board.

22. "Subscription provider of health care" means an entity that, through contractual agreement, is responsible for the payment, in whole or in part, of debts incurred by a person for medical or other health care services.

### 32-1801. Arizona board of osteopathic examiners in medicine and surgery

A. There shall be an Arizona board of osteopathic examiners in medicine and surgery which shall consist of seven members appointed by the governor. One member of the board shall be appointed each year for a term of five years, to begin and end on April 15.

B. Two members of the board shall be public members who shall not be in any manner connected with, or have an interest in, any school of medicine or any person practicing any form of healing or treatment of bodily or mental ailments and who has demonstrated an interest in the health problems of the state. The other five members of the board shall have engaged in the practice of medicine as an osteopathic physician in this state for at least five years preceding their appointments, hold active licenses in good standing and, at the time of appointment, be practicing medicine with direct patient contact. In making appointments of each professional member of the board, the governor shall consider a list of qualified persons submitted by the Arizona osteopathic medical association and recommendations by any other person. Members of the board shall continue in office until their successors are appointed and qualified. Each board member, prior to entering upon his duties, shall take an oath prescribed by law and in addition thereto shall make an oath as to his qualifications as prescribed in this section. No board member may serve more than two consecutive five year terms.

C. Board members may be removed by the governor if they fail to attend three or more board meetings within twelve months. This does not include telephonic meetings of the board. The governor may also remove board members for malfeasance, misfeasance or incompetence in their office, unprofessional or dishonorable conduct in their office or unprofessional or dishonorable conduct. The governor shall appoint a qualified replacement to fill a vacant position for the unexpired portion of the term.

32-1802. Meetings; organization; compensation; committees

A. The board shall hold an annual meeting during the month of January each year in the Phoenix metropolitan area and may hold other meetings at times and places determined by a majority of the board on notice to each member and the general public pursuant to title 38, chapter 3, article 3.1. A majority of the members of the board constitutes a quorum, and a majority vote of a quorum present at any meeting governs all board actions.

B. At each annual meeting the board shall select from among its membership a president and vice-president who shall serve until their successors are chosen. If either of these offices becomes vacant before the annual meeting, the board may elect a replacement at any other board meeting.

C. Members of the board are eligible to receive compensation in the amount of two hundred fifty dollars for each day of actual service in the business of the board and reimbursement of all expenses necessarily and properly incurred in attending meetings of the board.

D. Board members, the executive director, permanent or temporary board personnel, board consultants, committee members and professional medical investigators are immune from civil liability for any act they do in good faith to implement this chapter.

E. To carry out the functions of the board, the board president may establish committees and define committee duties. The president shall name at least one board member to each committee the president establishes.

32-1803. Powers and duties

A. The board shall:

1. Protect the public from unlawful, incompetent, unqualified, impaired and unprofessional practitioners of osteopathic medicine.

2. Issue licenses, conduct hearings, place physicians on probation, revoke or suspend licenses, enter into stipulated orders, issue letters of concern or decrees of censure and administer and enforce this chapter.

3. Maintain a record of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses to practice according to this chapter. The board shall delete records of complaints only as follows:

(a) If the board dismisses a complaint, the board shall delete the public record of the complaint five years after it dismissed the complaint.

(b) If the board has issued a letter of concern but has taken no further action on the complaint, the board shall delete the public record of the complaint five years after it issued the letter of concern.

(c) If the board has required additional continuing medical education pursuant to section 32-1855 but has not taken further action, the board shall delete the public record of the complaint five years after the person satisfies this requirement.

4. Maintain a public directory of all osteopathic physicians and surgeons who are or were licensed pursuant to this chapter that includes:

(a) The name of the physician.

(b) The physician's current or last known address of record.

(c) The date and number of the license issued to the physician pursuant to this chapter.

(d) The date the license is scheduled to expire if not renewed or the date the license expired or was revoked, suspended or canceled.

(e) Any disciplinary actions taken against the physician by the board.

(f) Letters of concern, remedial continuing medical education ordered and dismissals of complaints against the physician until deleted from the public record pursuant to paragraph 3 of this subsection.

5. Adopt rules regarding the regulation and the qualifications of medical assistants.
6. Discipline and rehabilitate osteopathic physicians.
- B. The public records of the board are open to inspection at all times during office hours.
- C. The board may:
  1. Adopt rules necessary or proper for the administration of this chapter.
  2. Appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.
  3. Accept and spend federal monies and private grants, gifts, contributions and devises. These monies do not revert to the state general fund at the end of a fiscal year.
  4. Develop and publish advisory opinions and standards governing the profession.
- D. The board shall adopt and use a seal, the imprint of which, together with the signature of either the president, vice-president or executive director, is evidence of its official acts.
- E. In conducting investigations pursuant to this chapter the board may receive and review confidential internal staff reports relating to complaints and malpractice claims.
- F. The board may make available to academic and research organizations public records regarding statistical information on doctors of osteopathic medicine and applicants for licensure.

**32-1804. Executive director; compensation; duties**

- A. Subject to title 41, chapter 4, article 4, the board shall appoint an executive director who is not a member of the board. The executive director shall serve at the pleasure of the board and shall receive compensation as determined pursuant to section 38-611 to be paid from the board fund.
- B. The executive director or that person's designee shall:
  1. Serve as administrative assistant to the board and manage the board's offices.
  2. Collect all monies due and payable to the board.
  3. Deposit, pursuant to sections 35-146 and 35-147, all monies received by the board in the appropriate fund.
  4. Pay all bills for authorized board expenditures.
  5. Administer oaths.
  6. Act as custodian of the board's seal and books.
  7. Employ special consultants or other agents subject to title 41, chapter 4, article 4 to make investigations, gather information, review complaints, review malpractice claims, suits and settlements, prepare reports and perform other duties the executive director determines are necessary to enforce this chapter.
  8. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ, evaluate, dismiss, discipline and direct professional, clerical, technical, investigative and administrative personnel necessary to carry out the purposes of this chapter. The personnel are eligible to receive compensation pursuant to section 38-611.
  9. Issue licenses, limited licenses, registrations, permits, license renewal extensions and waivers to applicants who meet the requirements of this chapter.
  10. Enter into contracts pursuant to title 41, chapter 23 for goods and services that are necessary to carry out board policies and directives.
  11. Prepare minutes, reports and records of all board transactions and orders.
  12. Prepare a biannual budget.
  13. As directed by the board, prepare and submit recommendations for changes to this chapter for consideration by the legislature.
  14. Initiate an investigation if evidence appears to demonstrate that a physician may be engaged in unprofessional conduct or may be mentally incompetent or physically unable to safely practice medicine.

15. Issue subpoenas to compel the attendance and testimony of a witness and the production of evidence.
16. As directed by the board, provide assistance to the attorney general in preparing and executing disciplinary orders, rehabilitation orders and notices of hearings.
17. Represent the board with the federal government, other states and jurisdictions of the United States, this state, political subdivisions of this state, the news media and the public.
18. If delegated by the board, dismiss complaints that, after an investigation, demonstrate insufficient evidence that the physician's conduct violated this chapter.
19. If delegated by the board, enter into a stipulated agreement with a licensee for the treatment, rehabilitation and monitoring of the licensee's abuse or misuse of a chemical substance.
20. Review all complaints filed pursuant to section 32-1855. If delegated by the board, the executive director may also dismiss a complaint if the complaint is without merit. The executive director shall not dismiss a complaint if a court has entered a medical malpractice judgment against a physician. The executive director shall submit to the board a report of each complaint the executive director dismisses for its review at its next regular board meeting. The report shall include the complaint number, the name of the physician and the investigation timeline for each dismissed complaint.
21. If delegated by the board, refer complaints for an investigative hearing.
22. If delegated by the board, close complaints resolved through mediation.
23. If delegated by the board, issue letters of concern or orders for nondisciplinary education, or both.
24. If delegated by the board, enter into a consent agreement if there is evidence of danger to the public health and safety.
25. If delegated by the board, grant uncontested requests for cancellation of a license pursuant to section 32-1827.
26. Perform any other duty required by the board.

#### 32-1805. Board fund; disbursements

- A. Before the end of the calendar month, pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies received by the board from fees and other monies provided for in section 32-1826 in the state general fund and deposit the remaining ninety per cent in the board fund. All monies derived from civil penalties collected pursuant to section 32-1855 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- B. Monies deposited in the board fund shall be subject to section 35-143.01.

#### 32-1806. Jurisdiction arbitration panel

- A. When the board receives a complaint concerning a physician who is also licensed pursuant to chapter 29 of this title, the board shall immediately notify the board of homeopathic and integrated medicine examiners. If the boards disagree and if both boards continue to claim jurisdiction over the dual licensee, an arbitration panel shall decide jurisdiction pursuant to section 32-2907, subsections B, C, D and E.
- B. If the licensing boards decide without resorting to arbitration which board or boards shall conduct the investigation, the board or boards conducting the investigation shall transmit all investigation materials, findings and conclusions to the other board with which the physician is licensed. The board or boards shall review this information to determine if disciplinary action shall be taken against the physician.

#### 32-1821. Persons and acts not affected by chapter

This chapter does not prevent:

1. A duly licensed physician and surgeon of any other state, district or territory from meeting a person licensed pursuant to this chapter within this state for consultation or, pursuant to an invitation by a sponsor, visiting this state for the sole purpose of promoting professional education through lectures, clinics or demonstrations as long as the visiting physician does not open an office, designate a place to meet patients or receive calls relating to the practice of medicine outside of the facilities and programs of the sponsor.
2. The practice of any other method, system or science of healing by a person duly licensed pursuant to the laws of this state.
3. The practice by physicians and surgeons discharging their duties while members of the armed forces of the United States or other federal agencies.
4. Any act, task or function performed by a physician assistant or registered nurse practitioner in the proper discharge of that person's duties.
5. A person administering a lawful domestic or family remedy to a member of that person's immediate family.
6. Providing medical assistance in case of an emergency.
7. The emergency harvesting of donor organs.

**32-1822. Qualifications of applicant; application; fingerprinting; fees**

A. On a form and in a manner prescribed by the board, an applicant for licensure shall submit proof that the applicant:

1. Is the person named on the application and on all supporting documents submitted.
2. Is a citizen of the United States or a resident alien.
3. Is a graduate of a school of osteopathic medicine approved by the American osteopathic association.
4. Has successfully completed an approved internship, the first year of an approved multiple-year residency or a board-approved equivalency.
5. Has passed the approved examinations for licensure within seven years of application or has the board-approved equivalency of practice experience.
6. Has not engaged in any conduct that, if it occurred in this state, would be considered unprofessional conduct or, if the applicant has engaged in unprofessional conduct, is rehabilitated from the underlying conduct.
7. Is physically, mentally and emotionally able to practice medicine, or, if limited, restricted or impaired in the ability to practice medicine, consents to contingent licensure pursuant to subsection E of this section or to entry into a program prescribed in section 32-1861.
8. Is of good moral character.
9. Beginning September 1, 2017, has submitted a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

B. An applicant must submit with the application the nonrefundable application fee prescribed in section 32-1826 and pay the prescribed license issuance fee to the board at the time the license is issued.

C. The board or the executive director may require an applicant to submit to a personal interview, a physical examination or a mental evaluation or any combination of these, at the applicant's expense, at a reasonable time and place as prescribed by the board if the board determines that this is necessary to provide the board adequate information regarding the applicant's ability to meet the licensure requirements of this chapter. An interview may include medical knowledge questions and other matters that are relevant to licensure.

- D. The board may deny a license for any unprofessional conduct that would constitute grounds for disciplinary action pursuant to this chapter or as determined by a competent domestic or foreign jurisdiction.
- E. The board may issue a license that is contingent on the applicant entering into a stipulated order that may include a period of probation or a restriction on the licensee's practice.
- F. The executive director may issue licenses to applicants who meet the requirements of this section.
- G. A person whose license has been revoked, denied or surrendered in this or any other state may apply for licensure not sooner than five years after the revocation, denial or surrender.
- H. A license issued pursuant to this section is valid for the remainder of the calendar year in which it was issued, at which time it is eligible for renewal.

**32-1823. Locum tenens registration; application; term; interview; denial of application; discipline**

A. A doctor of osteopathy who is licensed to practice osteopathic medicine and surgery by another state may be registered to provide locum tenens medical services to substitute for or temporarily assist a doctor of osteopathy who holds an active license pursuant to this chapter or a doctor of medicine who holds an active license pursuant to chapter 13 of this title under the following conditions:

1. The applicant provides on forms and in a manner prescribed by the board proof that the applicant meets the applicable requirements of section 32-1822.
2. The doctor of medicine or doctor of osteopathy for whom the applicant is substituting or assisting provides to the board a written request for locum tenens registration of the applicant.

B. On completion of the registration form prescribed by the board and payment of the required fees, the executive director may register a qualifying doctor of osteopathy by locum tenens registration and authorize the doctor to provide locum tenens services.

C. Locum tenens registration granted pursuant to this section is valid for ninety days and may be extended once for an additional ninety days on written request by the doctor of medicine or doctor of osteopathy who originally initiated the request for this registration, stating the reason extension is necessary, and by submitting the appropriate fees and other documents requested by the executive director.

D. The board or the executive director may require an applicant to submit to a personal interview to provide the board with adequate information regarding the applicant's ability to practice under locum tenens registration. The applicant is responsible for all costs to attend the interview.

E. The board may deny the application for a locum tenens registration for any unprofessional conduct that would constitute grounds for disciplinary action pursuant to this chapter or as determined by a competent domestic or foreign jurisdiction.

F. A locum tenens registrant is subject to the disciplinary provisions pursuant to this chapter.

**32-1824. Expedited licensure; medical licensure compact; fingerprinting**

Beginning September 1, 2017, applicants for expedited licensure pursuant to section 32-3241 shall submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. Communication between the board and the interstate medical licensure compact commission regarding verification of physician eligibility for licensure under the medical licensure compact may not include any information received from the federal bureau of investigation relating to a state and federal criminal records check performed for the purposes of section 32-3241, section 5, subsection B, paragraph 2.

**32-1825. Renewal of licenses; continuing medical education; failure to renew; penalty; reinstatement; waiver of continuing medical education**

A. Except as provided in section 32-4301, each licensee shall renew the license every other year on or before January 1 on an application form approved by the board. At least sixty days before that renewal date, the executive director shall notify each licensee of this requirement. The executive director shall send this notification by mail to the licensee at the licensee's address.

B. With the application prescribed pursuant to subsection A of this section, the licensee shall furnish to the executive director a statement of having attended before the license renewal date educational programs, approved by the board, totaling at least forty clock hours during the preceding years, and a statement that the licensee reported any conduct that may constitute unprofessional conduct in this state or elsewhere. The application must also include the prescribed renewal fee. The executive director shall then issue a renewal receipt to the licensee. The board may require a licensee to submit documentation of continuing medical education.

C. The board shall not renew the license of a licensee who does not fully document the licensee's compliance with the continuing education requirements of subsection B of this section unless that person receives a waiver of those requirements. The board may waive the continuing education requirements of subsection B of this section for a particular period if it is satisfied that the licensee's noncompliance was due to the licensee's disability, military service or absence from the United States or to other circumstances beyond the control of the licensee. If a licensee fails to attend the required number of clock hours for reasons other than those specified in this subsection, the board may grant an extension until May 1 of that year for the licensee to comply.

D. Unless the board grants an extension pursuant to subsection C of this section, a licensee who fails to renew the license within thirty days after the renewal date shall pay a penalty fee and a reimbursement fee in addition to the prescribed renewal fee. Except as provided in sections 32-3202 and 32-4301, a license expires if a person does not renew the license within four months after the renewal date. A person who practices osteopathic medicine after that time is in violation of this chapter. A person whose license expires may reapply for a license pursuant to this chapter.

### 32-1826. Fees; penalty

A. The board shall establish fees of not to exceed the following:

1. For an application to practice osteopathic medicine, four hundred dollars.
2. For issuance of a license, two hundred dollars, prorated by each month remaining in the calendar year of issuance.
3. For biennial renewal of a license, eight hundred dollars.
4. For locum tenens registration or extension, three hundred dollars.
5. For issuance of a duplicate license, one hundred dollars.
6. For an annual training permit for an approved postgraduate training program or short-term residency program, one hundred dollars.
7. For an annual teaching license issued pursuant to section 32-1831, four hundred dollars.
8. For a five-day educational teaching permit at an approved school of medicine or at an approved teaching hospital's accredited graduate medical education program, two hundred dollars.
9. For the sale of a computerized format of the board's licensee directory that does not require programming, one hundred dollars.
10. For initial and annual registration to dispense drugs and devices, two hundred fifty dollars, prorated by each month remaining in the calendar year of issuance.

B. The board shall charge a one hundred fifty dollar penalty fee for late renewal of a license and a twenty-five dollar reimbursement fee to cover the board's expenses in collecting late renewal fees. The board shall deposit this fee in the board fund.

C. The board may charge additional fees for services the board determines are necessary and appropriate to carry out this chapter. These fees shall not exceed the actual cost of providing the services.

#### 32-1827. Cancellation of a license; requirements

The board shall cancel a license at the licensee's request if the licensee is not the subject of a board investigation or disciplinary proceeding.

#### 32-1828. Education teaching permits

A. The dean of a school of osteopathic medicine approved by the American osteopathic association or the chairman of a teaching hospital's accredited graduate medical education program may invite a doctor of osteopathy who is not licensed in this state to demonstrate and perform medical procedures and surgical techniques for the sole purpose of promoting professional education for students, interns, residents, fellows and doctors of osteopathy in this state.

B. The chairman or dean of the inviting institution shall provide to the board evidence that an applicant for an educational permit has malpractice insurance in an amount that meets the requirements of that institution and that the applicant accepts all responsibility and liability for the procedures the applicant performs within the scope of the applicant's permit.

C. In a letter to the board, the chairman or dean of the inviting institution shall outline the procedures and techniques that the doctor of medicine will perform or demonstrate and the dates that this activity will occur. The letter shall also include a summary of the doctor of osteopathy's education and professional background and shall be accompanied by the fee required pursuant to this chapter.

D. The inviting institutions shall submit the fees and documents required pursuant to this section no later than two weeks before the scheduled activity.

E. The board through its staff shall issue an educational teaching permit for not more than five days for each approved activity.

#### 32-1829. Training permits; issuance of permits

A. The board may grant a one-year renewable training permit to a person who is participating in a teaching hospital's accredited internship, residency or clinical fellowship training program to allow that person to practice medicine only in the supervised setting of that program. Before the board issues the permit, the person shall:

1. Submit an application on a form and in a manner prescribed by the board and proof that the applicant:

(a) Is the person named on the application and on all supporting documentation.

(b) Is a citizen of the United States or a resident alien.

(c) Is a graduate of a school approved by the American osteopathic association.

(d) Participated in postgraduate training, if any.

(e) Has passed approved examinations appropriate to the applicant's level of education and training.

(f) Has not engaged in any conduct that, if it occurred in this state, would be considered unprofessional conduct or, if the applicant has engaged in unprofessional conduct, is rehabilitated from the underlying conduct.

(g) Is of good moral character.

(h) Is physically, mentally and emotionally able to practice medicine, or, if limited, restricted or impaired in the ability to practice medicine, consents to a contingent permit or to entry into a program described in section 32-1861.

2. Pay the nonrefundable application fee prescribed by the board.

B. If a permittee who is participating in a teaching hospital's accredited internship, residency or clinical fellowship training program must repeat or make up time in the program due to resident progression or for other reasons, the board may grant that person an extension of the training permit if requested to do so by the program's director of medical education or a person who holds an equivalent position. The extended permit limits the permittee to practicing only in the supervised setting of that program for a period of time sufficient to repeat or make up the training.

C. The board may grant a training permit to a person who is not licensed in this state and who is participating in a short-term training program of four months or less for continuing medical education conducted in an approved school of osteopathic medicine or a hospital that has an accredited hospital internship, residency or clinical fellowship training program in this state. Before the board issues the permit, the person shall:

1. Submit an application on a form and in a manner prescribed by the board and proof that the applicant meets the requirements prescribed in subsection A, paragraph 1 of this section.

2. Pay the nonrefundable application fee prescribed by the board.

D. A permittee is subject to the disciplinary provisions of this chapter.

E. The executive director may issue a permit to an applicant who meets the requirements of this chapter.

F. If a permit is not issued pursuant to subsection E of this section, the board may issue a permit or may:

1. Issue a permit that is contingent on the applicant entering into a stipulated agreement that may include a period of probation or a restriction on the permittee's practice.

2. Deny a permit to an applicant who does not meet the requirements of this chapter.

### 32-1830. Training permits; approved schools

The executive director may grant a one-year training permit to a person who:

1. Participates in a program at an approved school of medicine or a hospital that has an approved hospital internship, residency or clinical fellowship training program if the purpose of the program is to exchange technical and educational information.

2. Pays the fee as prescribed by the board.

3. Submits a written statement from the dean of the approved school of osteopathic medicine or from the chairman of a teaching hospital's accredited graduate medical education program that:

- (a) Includes a request for the permit and describes the purpose of the exchange program.

- (b) Specifies that the host institution shall provide liability coverage.

- (c) Provides proof that a doctor of medicine will serve as the preceptor of the host institution and provide appropriate supervision of the participant.

- (d) States that the host institution has advised the participant that the participant may serve as a member of an organized medical team but shall not practice medicine independently and that this training does not accrue toward postgraduate training requirements for licensure.

### 32-1831. Teaching licenses; definitions

A. A doctor of osteopathic medicine who is not licensed in this state may be employed as a full-time faculty member by a school of osteopathic medicine in this state approved by the American osteopathic association or a teaching hospital's accredited graduate medical education program in this state to provide professional education through lectures, clinics or demonstrations if the doctor holds a teaching license issued pursuant to this section.

B. An applicant for a teaching license shall:

1. Submit a completed application as prescribed by the board.

2. Pay all fees prescribed by the board. Application fees are nonrefundable.

3. Meet the requirements of section 32-1822.

C. A person who is licensed pursuant to this section shall not open an office or designate a place to meet patients or receive calls relating to the practice of osteopathic medicine in this state outside of the facilities and programs of the approved school or teaching hospital.

D. A person who is licensed pursuant to this section shall comply with the requirements of this chapter, with the exception of those that relate to licensing examinations.

E. The board or the executive director may require an applicant to submit to a personal interview, a physical examination or a mental health evaluation, or any combination of these, at the applicant's expense. The board shall prescribe a reasonable time and place if the board determines that this is necessary to provide the board with adequate information regarding the applicant's ability to meet the licensure requirements of this chapter. The interview may include questions regarding medical knowledge and other matters relevant to licensure.

F. The board may deny a license for any unprofessional conduct that would constitute grounds for disciplinary action pursuant to this chapter or as determined by a competent domestic or foreign jurisdiction.

G. A person who is licensed pursuant to this section is subject to the disciplinary provisions pursuant to this chapter.

H. A license issued pursuant to this section is valid for two years. A doctor of osteopathic medicine may apply for licensure once every two years, subject to the continuing medical education requirements prescribed in section 32-1825.

I. For the purposes of this section:

1. "Accredited" means that the school or teaching hospital has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American osteopathic association or a similar body that is approved by the board.

2. "Full-time faculty member" means a full-time faculty member as prescribed by the school of osteopathic medicine or the teaching hospital.

### 32-1832. Retired license; waiver of fees; reinstatement; limited license; volunteer work

A. The board shall waive a physician's biennial renewal fee if the physician has paid all past fees, presents an affidavit to the board stating that the physician has permanently retired from the practice of osteopathic medicine and does not have any pending complaints or open disciplinary matters before the board.

B. A retired physician whose biennial fee has been waived by the board pursuant to this section is not required to comply with any continuing medical education requirements of this chapter.

C. After retired status is granted by the board, a retired physician shall submit a renewal of retired status every two years on a form and in a manner prescribed by the board.

D. Except as provided in subsection F of this section, a retired physician who has had the biennial renewal fee waived by the board pursuant to this section and who engages in the practice of osteopathic medicine is subject to the same penalties that are imposed pursuant to this chapter on a person who practices medicine without a license or without being exempt from licensure.

E. The board may reinstate a retired physician to active status on payment of the biennial renewal fee and presentation of evidence satisfactory to the board that the physician meets the qualifications prescribed pursuant to section 32-1822. The board may deny the request for reinstatement, place the licensee on probation or issue a limited license that requires general or direct supervision by another licensed doctor of osteopathy for not more than one year.

F. A retired physician who has had the biennial renewal fee waived by the board pursuant to this section may perform volunteer work of not more than ten hours each week and may teach or provide instruction at an approved school of osteopathic medicine.

### 32-1833. Pro bono registration

A. The board may issue a pro bono registration to allow a doctor of osteopathy who is not a licensee to practice in this state for a total of sixty days each calendar year if the doctor meets all of the following requirements:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States.
2. Has never had a license revoked or suspended by a health profession regulatory board of another jurisdiction.
3. Is not the subject of an unresolved complaint.
4. Applies for registration on an annual basis as prescribed by the board.
5. Agrees to render all medical services without accepting a fee or salary or performs only initial or follow-up examinations at no cost to the patient and the patient's family through a charitable organization.

B. The sixty days of practice prescribed pursuant to subsection A of this section may be performed consecutively or cumulatively during each calendar year.

C. For the purpose of meeting the requirements of subsection A of this section, an applicant under this section shall provide the board the name of each state in which the person is licensed or has held a license. The board shall verify with the applicable regulatory board of each state that the applicant is licensed or has held a license, has never had a license revoked or suspended and is not the subject of an unresolved complaint. The board may accept the verification of the information required by subsection A, paragraphs 1, 2 and 3 of this section from each of the other state's regulatory boards either electronically or by hard copy.

### 32-1834. Temporary licensure; requirements; fee

A. Beginning July 1, 2017, the board may issue a temporary license, which may not be renewed or extended, to allow a physician who is not a licensee to practice in this state for a total of up to two hundred fifty consecutive days if the physician meets all of the following requirements:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States.
2. Has never had a license revoked or suspended or surrendered a license for disciplinary reasons.
3. Is not the subject of an unresolved complaint.
4. Has applied for a license pursuant to section 32-1822.
5. Has paid any applicable fees.

B. The physician shall submit to the board a notarized affidavit attesting that the physician meets the requirements of subsection A, paragraphs 1, 2 and 3 of this section. The physician shall notify the board immediately if any circumstance specified in subsection A, paragraphs 1, 2 and 3 of this section changes during the application period for a temporary license or while holding a temporary license, at which time the board may deny or revoke the temporary license.

C. The board shall approve or deny an application under this section within thirty days after an applicant files a complete application. The approval of a temporary license pursuant to this section allows the physician to practice in this state without restriction.

D. If granted, the physician's temporary license expires the earlier of two hundred fifty days after the date the temporary license is granted or on approval or denial of the physician's license application submitted pursuant to section 32-1822.

E. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state, territory or possession of the United States in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board that the

applicant holds an active and unrestricted license to practice medicine, has never had a license revoked or suspended or surrendered a license for disciplinary reasons and is not the subject of an unresolved complaint. The board may accept the verification of this information from each other regulatory board verbally, which shall be followed by either an electronic or hard copy before the physician's permanent license is granted. If the board is unable to verify the information within the initial thirty days as required by subsection C of this section, the board may extend the time frame by an additional thirty days to receive the necessary verification.

F. The board may establish a fee in rule for temporary licensure under this section.

### 32-1835. Specialty certification; prohibited requirement for licensure; definition

A. The board may not require an applicant for licensure pursuant to this article to hold or maintain a specialty certification as a condition of licensure in this state. This subsection does not prohibit the board from considering an applicant's specialty certification as a factor in whether to grant a license to the applicant.

B. For the purposes of this section, "specialty certification" means certification by a board that specializes in one particular area of medicine and that may require examinations in addition to those required by this state to be licensed to practice medicine.

### 32-1851. Prohibited acts

The following acts are prohibited:

1. Practicing medicine and surgery as an osteopathic physician and surgeon without holding a license issued by the board under the provisions of this chapter.
2. Misusing the designation "D.O." in a way that leads the public to believe that a person is licensed to practice medicine in this state.
3. Using the designation "doctor of osteopathy", "doctor of osteopathic medicine", "osteopathic physician", "osteopathic surgeon", "osteopathic physician and surgeon" or any combination of these terms unless the designation additionally contains the description of another branch of the healing arts.
4. Using any other words, initials or symbols or a combination of these that leads the public to believe a person is licensed to practice medicine in this state.

### 32-1852. Rights and duties of osteopathic physicians and surgeons; scope of practice

A person holding a license under this chapter to practice medicine and surgery as an osteopathic physician and surgeon shall be subject to all state and local laws and regulations pertaining to public health. In diagnosing, prognosticating and treating any human ills he shall be subjected to all the same duties and obligations and authorized to exercise all the same rights and privileges possessed by physicians and surgeons of other complete schools of medicine in the practice of their profession.

### 32-1853. Use of title

A person licensed under this chapter shall use the title "osteopathic physician and surgeon", "osteopathic physician" or "doctor of osteopathy" or affix the initials "D.O." after the licensee's name.

#### 32-1853.01. Use of title by a medical assistant

It is unlawful for a person to use the title "medical assistant" or a related abbreviation unless the person is working as a medical assistant under the supervision of a doctor of osteopathic medicine pursuant to rules adopted by the board.

#### 32-1854. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" includes the following acts, whether occurring in this state or elsewhere:

1. Knowingly betraying a professional secret or wilfully violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from exchanging information with the licensing and disciplinary boards of other states, territories or districts of the United States or with foreign countries or with osteopathic medical organizations located in this state or in any state, district or territory of this country or in any foreign country.
2. Committing a felony or a misdemeanor involving moral turpitude. In either case conviction by any court of competent jurisdiction is conclusive evidence of the commission of the offense.
3. Practicing medicine while under the influence of alcohol, a dangerous drug as defined in section 13-3401, narcotic or hypnotic drugs or any substance that impairs or may impair the licensee's ability to safely and skillfully practice medicine.
4. Being diagnosed by a physician licensed under this chapter or chapter 13 of this title or a psychologist licensed under chapter 19.1 of this title as excessively or illegally using alcohol or a controlled substance.
5. Prescribing, dispensing or administering controlled substances or prescription-only drugs for other than accepted therapeutic purposes.
6. Engaging in the practice of medicine in a manner that harms or may harm a patient or that the board determines falls below the community standard.
7. Impersonating another physician.
8. Acting or assuming to act as a member of the board if this is not true.
9. Procuring, renewing or attempting to procure or renew a license to practice osteopathic medicine by fraud or misrepresentation.
10. Having professional connection with or lending one's name to an illegal practitioner of osteopathic medicine or any of the other healing arts.
11. Representing that a manifestly incurable disease, injury, ailment or infirmity can be permanently cured or that a curable disease, injury, ailment or infirmity can be cured within a stated time, if this is not true.
12. Failing to reasonably disclose and inform the patient or the patient's representative of the method, device or instrumentality the licensee uses to treat the patient's disease, injury, ailment or infirmity.
13. Refusing to divulge to the board on demand the means, method, device or instrumentality used in the treatment of a disease, injury, ailment or infirmity.
14. Charging a fee for services not rendered or dividing a professional fee for patient referrals. This paragraph does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for clinical trial regulated by the United States food and drug administration.
15. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or when applying for or renewing privileges at a health care institution or a health care program.
16. Advertising in a false, deceptive or misleading manner.
17. Representing or claiming to be an osteopathic medical specialist if the physician has not satisfied the applicable requirements of this chapter or board rules.

18. The denial of or disciplinary action against a license by any other state, territory, district or country, unless it can be shown that this occurred for reasons that did not relate to the person's ability to safely and skillfully practice osteopathic medicine or to any act of unprofessional conduct as provided in this section.
19. Any conduct or practice contrary to recognized standards of ethics of the osteopathic medical profession.
20. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any of the provisions of this chapter.
21. Failing or refusing to establish and maintain adequate records on a patient as follows:
  - (a) If the patient is an adult, for at least six years after the last date the licensee provided the patient with medical or health care services.
  - (b) If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least six years after the last date the licensee provided that patient with medical or health care services, whichever date occurs later.
22. Using controlled substances or prescription-only drugs unless they are provided by a medical practitioner, as defined in section 32-1901, as part of a lawful course of treatment.
23. Prescribing controlled substances to members of one's immediate family unless there is no other physician available within fifty miles to treat a member of the family and an emergency exists.
24. Nontherapeutic use of injectable amphetamines.
25. Violating a formal order, probation or a stipulation issued by the board under this chapter.
26. Charging or collecting an inappropriate fee. This paragraph does not apply to a fee that is fixed in a written contract between the physician and the patient and entered into before treatment begins.
27. Using experimental forms of therapy without adequate informed patient consent or without conforming to generally accepted criteria and complying with federal and state statutes and regulations governing experimental therapies.
28. Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, physician or homeopathic physician licensed under chapter 7, 8, 13, 14 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent, the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.
29. Failing to allow properly authorized board personnel to have, on presentation of a subpoena, access to any documents, reports or records that are maintained by the physician and that relate to the physician's medical practice or medically related activities pursuant to section 32-1855.01.
30. Signing a blank, undated or predated prescription form.
31. Obtaining a fee by fraud, deceit or misrepresentation.
32. Failing to report to the board an osteopathic physician and surgeon who is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine.
33. Referring a patient to a diagnostic or treatment facility or prescribing goods and services without disclosing that the physician has a direct pecuniary interest in the facility, goods or services to which the patient has been referred or prescribed. This paragraph does not apply to a referral by one physician to another physician within a group of physicians practicing together.
34. Lack of or inappropriate direction, collaboration or supervision of a licensed, certified or registered health care provider or office personnel employed by or assigned to the physician in the medical care of patients.
35. Violating a federal law, a state law or a rule applicable to the practice of medicine.
36. Prescribing or dispensing controlled substances or prescription-only medications without establishing and maintaining adequate patient records.

37. Failing to dispense drugs and devices in compliance with article 4 of this chapter.
38. Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.
39. Any conduct or practice that impairs the licensee's ability to safely and skillfully practice medicine or that may reasonably be expected to do so.
40. With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.
41. Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.
42. Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this paragraph, "sexual conduct" includes:
  - (a) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.
  - (b) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical conduct of a sexual nature.
43. Fetal experiments conducted in violation of section 36-2302.
44. Conduct that the board determines constitutes gross negligence, repeated negligence or negligence that results in harm or death of a patient.
45. Conduct in the practice of medicine that evidences moral unfitness to practice medicine.
46. Engaging in disruptive or abusive behavior in a professional setting.
47. Failing to disclose to a patient that the licensee has a direct financial interest in a prescribed treatment, good or service if the treatment, good or service is available on a competitive basis. This paragraph does not apply to a referral by one licensee to another licensee within a group of licensees who practice together. A licensee meets the disclosure requirements of this paragraph if all of the following are true:
  - (a) The licensee makes the disclosure on a form prescribed by the board.
  - (b) The patient or the patient's guardian or parent acknowledges by signing the form that the licensee has disclosed the licensee's direct financial interest.
48. Prescribing, dispensing or furnishing a prescription medication or a prescription-only device to a person if the licensee has not conducted a physical or mental health status examination of that person or has not previously established a physician-patient relationship. The physical or mental health status examination may be conducted during a real-time telemedicine encounter with audio and video capability if the telemedicine audio and video capability meets the elements required by the centers for medicare and medicaid services, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1. This paragraph does not apply to:
  - (a) Emergencies.
  - (b) A licensee who provides patient care on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.
  - (c) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician.
  - (d) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157.

(e) Prescriptions written by a licensee through a telemedicine program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(f) Prescriptions for naloxone hydrochloride or any other opiate antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228.

49. If a licensee provides medical care by computer, failing to disclose the licensee's license number and the board's address and telephone number.

32-1855. Disciplinary action; duty to report; hearing; notice; independent medical examinations; surrender of license

A. Except as otherwise provided in this subsection, the board on its own motion may investigate any information that appears to show that an osteopathic physician and surgeon is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. A physician who conducts an independent medical examination pursuant to an order by a court or pursuant to section 23-1026 is not subject to a complaint for unprofessional conduct unless, in the case of a court-ordered examination, the complaint is made or referred by a court to the board, or in the case of an examination conducted pursuant to section 23-1026, the complaint alleges unprofessional conduct based on some act other than a disagreement with the findings and opinions expressed by the physician as a result of the examination. Any osteopathic physician or surgeon or the Arizona osteopathic medical association or any health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the physician or surgeon, association, health care institution or other person may have that appears to show that an osteopathic physician and surgeon is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of medicine. The board shall notify the doctor about whom information has been received as to the content of the information as soon as reasonable after receiving the information. Any person who reports or provides information to the board in good faith is not subject to civil damages as a result of that action. If requested the board shall not disclose the informant's name unless it is essential to the disciplinary proceedings conducted pursuant to this section. It is an act of unprofessional conduct for any osteopathic physician or surgeon to fail to report as required by this section. The board shall report any health care institution that fails to report as required by this section to that institution's licensing agency. A person who reports information in good faith pursuant to this subsection is not subject to civil liability. For the purposes of this subsection, "independent medical examination" means a professional analysis of medical status that is based on a person's past and present physical, medical and psychiatric history and conducted by a licensee or group of licensees on a contract basis for a court or for a workers' compensation carrier, self-insured employer or claims processing representative if the examination was conducted pursuant to section 23-1026.

B. The board may require a physician under investigation pursuant to subsection A of this section to be interviewed by the board or its representatives. The board or the executive director may require a licensee who is under investigation pursuant to subsection A of this section to undergo at the licensee's expense any combination of medical, physical or mental examinations the board finds necessary to determine the physician's competence.

C. If the board finds, based on the information it received under subsection A or B of this section, that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of a license pending proceedings for revocation or other action. If an order of summary suspension is issued, the licensee shall also be served with a written notice of complaint and formal hearing setting forth the charges made against the licensee and is entitled to a formal hearing on the charges pursuant to title 41, chapter 6, article 10. Formal proceedings shall be promptly instituted and determined.

D. If, after completing its investigation, the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit direct action against the physician's license, it may take any combination of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.
2. Issue a letter of concern.
3. In addition to the requirements of section 32-1825, require continuing medical education on subjects and within a time period determined by the board.
4. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

E. If, in the opinion of the board, it appears that information provided pursuant to this section is or may be true, the board may request an investigative hearing with the physician concerned. At an investigative hearing the board may receive and consider sworn statements of persons who may be called as witnesses and other pertinent documents. Legal counsel may be present and participate in the meeting. If the physician refuses the request or if the physician accepts the request and the results of the investigative hearing indicate suspension of more than twelve months or revocation of the license may be in order, a complaint shall be issued and an administrative hearing shall be held pursuant to title 41, chapter 6, article 10. After the investigative hearing and a mental, physical or medical competence examination as the board deems necessary, the board may take any of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.
2. Issue a letter of concern.
3. In addition to the requirements of section 32-1825, require continuing medical education on subjects and within a time period determined by the board.
4. Issue a decree of censure, which constitutes an official action against a physician's license.
5. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the physician concerned. Any costs incidental to the terms of probation are at the physician's own expense.
6. Restrict or limit the physician's practice in a manner and for a time determined by the board.
7. Suspend the physician's license for not more than twelve months.
8. Impose a civil penalty of not to exceed five hundred dollars for each violation of this chapter.
9. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
10. Issue an administrative warning.

F. If, in the opinion of the board, it appears the charge is of such magnitude as to warrant suspension for more than twelve months or revocation of the license, the board shall immediately initiate formal revocation or suspension proceedings pursuant to title 41, chapter 6, article 10. The board shall notify a licensee of a complaint and hearing by certified mail addressed to the licensee's last known address on record in the board's files.

G. A licensee shall respond in writing to the board within thirty days after the notice of formal or administrative hearing is served. A licensee who fails to answer the charges in a complaint and notice of formal or administrative hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

H. A physician who, after an investigative or administrative hearing, is found to be guilty of unprofessional conduct or is found to be mentally or physically unable safely to engage in the practice of osteopathic medicine is subject to any combination of censure, probation, suspension of license, revocation of license, an order to return patient fees, imposition of hearing costs, imposition of a civil

penalty of not to exceed five hundred dollars for each violation for a period of time, or permanently, and under conditions the board deems appropriate for the protection of the public health and safety and just in the circumstances. The board may charge the costs of an investigative or administrative hearing to the licensee if pursuant to that hearing the board determines that the licensee violated this chapter or board rules.

I. If the board acts to modify a physician's prescription writing privileges, it shall immediately notify the state board of pharmacy and the federal drug enforcement administration in the United States department of justice of the modification.

J. The board shall report allegations of evidence of criminal wrongdoing to the appropriate criminal justice agency.

K. Notice of a complaint and administrative hearing is effective when a true copy of the notice is sent by certified mail to the licensee's last known address of record in the board's files and is complete on the date of its deposit in the mail. The board shall hold an administrative hearing within one hundred twenty days after that date.

L. The board may accept the surrender of an active license from a licensee who admits in writing to having committed an act of unprofessional conduct, to having violated this chapter or board rules or to being unable to safely practice medicine.

32-1855.01. Right to examine and copy evidence; summoning witnesses and documents; taking testimony; right to counsel; court aid; process

A. Pursuant to an investigation conducted under this chapter, the board and its authorized agents and employees may examine any documents, reports, records or other physical evidence of any person being investigated, as well as the reports, records and other documents maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy or other public or private agency and health care institution as defined in section 36-401, that relate to medical competence, unprofessional conduct or the licensee's mental or physical ability to safely practice medicine. The investigators may copy evidence on site and at the licensee's expense. Failing to permit access on request is unprofessional conduct.

B. For the purpose of all investigations and proceedings conducted by the board:

1. The board, the executive director and the administrative law judges on their own initiative, or on application of any person involved in the investigation, may issue subpoenas to compel the attendance and testimony of witnesses or to demand the production for examination or copying of documents or any other physical evidence that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine. Within five days after the service of a subpoena requiring the production of evidence, the recipient of the subpoena may petition the board to revoke, limit or modify the subpoena. The board shall take the requested action if in its opinion the evidence required does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence whose production is required. Any member of the board or any agent designated by the board may administer oaths or affirmations, examine witnesses and receive evidence. The superior court may enforce a subpoena issued by the board.

2. Any person appearing before the board has the right to be represented by counsel.

3. The superior court on application by the board has jurisdiction to issue an order to require the subject of the subpoena to appear before the board or its agent and produce evidence relating to the matter under investigation. On application by the subject of the subpoena, the court may revoke, limit or modify the subpoena if in the court's opinion the evidence demanded does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation or does not describe with sufficient particularity the evidence whose production is required.

4. The superior court, on application by the board, has jurisdiction to issue an order enforcing a board-ordered examination for mental, physical or medical competence as provided in section 32-1855, subsection B.

#### 32-1855.03. Health care institution duty to report; immunity; patient records; confidentiality

A. A health care institution as defined in section 36-401 or a subscription provider of health care shall report to the board any information it may have that appears to show that a physician may be guilty of unprofessional conduct or may be mentally or physically unable safely to engage in the practice of medicine. A health care institution or subscription provider of health care that provides information to the board in good faith is not subject to an action for civil damages as a result and, if requested, the board shall not disclose its name unless the testimony is essential to the disciplinary proceedings conducted pursuant to section 32-1855. The board shall report a health care institution or subscription provider of health care that fails to report as required by this section to the institution's licensing agency.

B. The chief executive officer, the medical director or the medical chief of staff of a health care institution or subscription provider of health care shall inform the board when the privileges of a physician to practice in the health care institution or subscription provider of health care are denied, revoked, suspended or limited because of actions by the physician that jeopardized patient health and welfare or when the physician resigned during pending proceedings for denial, revocation, suspension or limitation of privileges. A report to the board pursuant to this subsection shall contain a general statement of the reasons the health care institution or subscription provider of health care took an action to deny, revoke, suspend or limit a physician's privileges.

C. Hospital records, medical staff records, medical staff review committee records and testimony concerning these records and proceedings related to the creation of these records are confidential and are subject to the same discovery and use in legal actions only as are the original records in the possession and control of hospitals, their medical staff and their medical staff review committees. The board shall use these records and testimony only during the course of investigations and proceedings pursuant to this chapter.

D. Patient records, including clinical records, medical reports, laboratory statements and reports, any file or film, any other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or the patient's family might be identified or information received and records kept by the board as a result of the investigation made pursuant to this chapter are confidential.

E. Nothing in this chapter or any other provision of law relating to privileged communications between a physician and patient applies to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep confidential the name of a patient whose records are reviewed during the course of an investigation and proceedings.

#### 32-1856. Judicial review

Except as provided in section 41-1092.08, subsection H, an appeal to the superior court in Maricopa county may be taken from any final decision of the board pursuant to title 12, chapter 7, article 6.

#### 32-1857. Injunction

A. An injunction may be issued to enjoin the practice of osteopathic medicine by either of the following:

1. A person not licensed to practice osteopathic medicine nor exempt from the licensing requirement under this chapter.

2. A physician whose continued practice will or may cause irreparable damage to the public health and safety.

B. In a petition for injunction under subsection A, paragraph 1 it is sufficient to charge that the respondent on a certain day in a named county engaged in the practice of osteopathic medicine without a license and without being exempt from the licensing requirement under this chapter. For the purpose of this subsection damage or injury as a result of such practice is presumed.

C. A petition for injunction shall be filed in the name of this state by the board or at the request of the attorney general in Maricopa county or the county where the respondent resides or may be found.

D. Issuance of an injunction does not relieve the respondent from being subject to any other proceedings under law provided for in this chapter or otherwise. Violation of an injunction shall be punished as for contempt of court.

E. In all other respects injunction proceedings under this section shall be conducted in the same manner as other injunctions.

### 32-1858. Violations; classification

A. A person who practices medicine and surgery as an osteopathic physician and surgeon without compliance with this chapter or a person who violates any of the provisions of this chapter is guilty of a class 5 felony.

B. A violation of each section of this chapter constitutes a separate offense and each day of continuing violation constitutes a separate offense.

### 32-1859. Medical assistants

Nothing in this chapter shall be construed to prevent a medical assistant from assisting a doctor of osteopathic medicine pursuant to rules adopted by the board.

### 32-1860. Acquired immune deficiency syndrome; disclosure of patient information; immunity; definition

A. Notwithstanding section 32-1854, it is not an act of unprofessional conduct for a physician to report to the department of health services the name of a patient's spouse or sex partner or a person with whom the patient has shared hypodermic needles or syringes if the physician knows that the patient has contracted or tests positive for the human immunodeficiency virus and that the patient has not or will not notify these people and refer them to testing. Before making the report to the department of health services, the physician shall first consult with the patient and ask the patient to release this information voluntarily.

B. It is not an act of unprofessional conduct for a physician who knows or has reason to believe that a significant exposure has occurred between a patient infected with the human immunodeficiency virus and a health care or public safety employee to inform the employee of the exposure. Before informing the employee, the physician shall consult with the patient and ask the patient to release this information voluntarily. If the patient does not release this information the physician may do so in a manner that does not identify the patient.

C. This section does not impose a duty to disclose information. A physician is not civilly or criminally liable for either disclosing or not disclosing information.

D. If a physician decides to make a disclosure pursuant to this section, he may request that the department of health services make the disclosure on his behalf.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or body fluids, other than tears, saliva or

perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

32-1861. Substance abuse treatment and rehabilitation program; private contract; funding

A. The board may establish a confidential program for the treatment and rehabilitation of licensees who are impaired by substance abuse. This program may include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.
2. Release to the board on demand of all treatment records.
3. Quarterly reports to the board regarding each physician's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.
4. Immediate reporting to the board of the name of an impaired physician who the treating organization believes to be incapable of safely practicing medicine.

C. The board may allocate an amount of not more than twenty dollars from each fee it collects from the renewal of licenses pursuant to section 32-1826 for the administration of the program established by this section.

32-1871. Dispensing of drugs and devices; conditions

A. An osteopathic physician may dispense drugs and devices kept by the physician if:

1. All drugs are dispensed in packages labeled with the following information:

- (a) The dispensing physician's name, address and telephone number.
- (b) The date the drug is dispensed.
- (c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing physician enters into the patient's medical record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing physician keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

4. The dispensing physician annually registers with the board to dispense drugs and devices.

5. The dispensing physician pays the registration fee prescribed by the board pursuant to section 32-1826. This paragraph does not apply if the physician is dispensing in a nonprofit practice and neither the patient nor a third party pays or reimburses the physician or the nonprofit practice for the drugs or devices dispensed.

6. The dispensing physician labels dispensed drugs and devices and stores them according to rules adopted by the board.

B. Except in an emergency situation, a physician who dispenses drugs without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Prior to dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type:

"This prescription may be filled by the prescribing physician or by a pharmacy of your choice."

D. A physician shall dispense only to the physician's patient and only for conditions being treated by that physician.

E. The board shall enforce this section and shall establish rules regarding labeling, record keeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to assure compliance with this section and applicable rules.

F. If a physician fails to renew a registration to dispense or ceases to dispense for any reason, within thirty days that physician must notify the board in writing of the remaining inventory of drugs and devices and the manner in which they were disposed.

**DEPARTMENT OF TRANSPORTATION**

Title 17, Chapter 1, Articles 1-3, 5-7, Department of Transportation Administration



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 22, 2019

**SUBJECT: ARIZONA DEPARTMENT OF TRANSPORTATION (R19-0702)**  
Title 17, Chapter 1, Articles 1-3, 5-7, Department of Transportation Administration

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This Five Year Review Report (5YRR) from the Arizona Department of Transportation (Department) relates to rules in Title 17, Chapter 1, Articles 1-3 and 5-7 governing administration. The rules address the following:

- **Article 1: General Provisions;**
- **Article 2: Fees;**
- **Article 3: Taxes;**
- **Article 5: Administrative Hearings;**
- **Article 6: Solicitation;**
- **Article 7: Advertising and Sponsorship Program.**

The Department did not complete the course of action indicated in the agency's previous 5YRR. In regard to Article 1 ("General Provisions"), the Department did not complete the course of action indicated for the following sections: R17-1-102, Table A, and Table B. The Department's indicated amendments to its rules were delayed because after multiple requests to the Governor's Office in October 2013 and March 2014, the Governor's Office found the Department's requested changes to be unnecessary. In regard to Article 3 ("Taxes"), the Department did not complete the course of action indicated in the previous 5YRR for the following rules because such changes were considered noncritical: R17-1-346, R17-1-347,

R17-1-348, R17-1-349. The Department plans to request permission from the Governor's Office to complete the amendments by expedited rulemaking.

### **Proposed Action**

Upon approval of this report, the Department anticipates the following course of action for each article:

- **Article 1:** the Department plans to proceed with expedited rulemaking for all amendments under Article 1 before December 31, 2019;
- **Article 2:** the Department finds no action necessary;
- **Article 3:** the Department plans to amend the rules in Article 3 by ensuring conformity with the Administrative Procedure Act. Upon receiving approval and permission from the Governor's office, the Department anticipates an expedited rulemaking by December 31, 2019;
- **Article 5:** the Department finds no action necessary. However, if the Department determines that substantive amendments are necessary to align the rules with recent changes, the Department will consider doing so;
- **Article 6:** the Department finds no action is necessary; and
- **Article 7:** the Department finds no action necessary.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department has determined that the economic impact does not differ significantly from what was determined in the last economic, small business, and consumer impact statement (EIS) from the most recent rulemaking. The changes proposed in this Five-Year Review Report are merely clarifying to ensure rules are more clear and understandable.

The stakeholders include the Department, the regulated public, solicitors, and private sponsors/advertisers.

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

Aside from some minor technical corrections, the Department has determined that the rules under review provide the least intrusive and least costly method of achieving this regulatory objective. The Department has determined while the regulated public and/or industry will bear minimal financial burden in the form of fees, the services provided by the Department outweigh those costs.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department has not received written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the rules are effective in achieving their objectives.

The Department also indicates that the rules are generally consistent with other rules and statutes. The Department notes a few statutory references that need to be updated, but the rules are still generally consistent with other rules and statutes.

However, the Department states that the rules as they are written are not clear, concise, and understandable. The Department intends to clarify the following rules by making minor technical corrections: R17-1-102, Table A, Table B, R17-1-346, R17-1-347, R17-1-348, R17-1-349, R17-1-501, R17-1-502, R17-1-503, R17-1-504, R17-1-505, R17-1-506, R17-1-507, R17-1-508, R17-1-509, R17-1-510, R17-1-511, R17-1-512, R17-1-513, R17-1-514.

The Department indicates that most of the above rules can be made more clear, concise, and understandable by renumbering sections of the rules, updating statutory changes, clarify existing language, and generally improving the structure of the rules.

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

Yes. The Department indicates that the rules are enforced as written.

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

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

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Each regulatory permit, license, or agency authorization the Department provides under these rules complies with A.R.S. § 41-1037.

**9. Conclusion**

Council staff finds that the rules are mostly clear, concise, understandable, and effective. As indicated above, the Department plans to make certain necessary changes to the rules upon approval of this report. Council staff recommends approval of this report.



Director's Office

*An Arizona Management System Agency*

Douglas A. Ducey, Governor  
John S. Halikowski, Director  
Scott Omer, Deputy Director/Chief Operating Officer  
Kevin Biesty, Deputy Director for Policy  
Dallas Hammit, Deputy Director for Transportation

February 28, 2019

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

Re: Five-year Review Report for 17 A.A.C. 1, Articles 1, 2, 3, 5, 6, and 7

Dear Ms. Sornsin:

The Arizona Department of Transportation submits for Council review and approval the accompanying Five-year Review Report for 17 A.A.C. Chapter 1, Articles 1, 2, 3, 5, 6, and 7. This document complies with all requirements provided under A.R.S. § 41-1056 and A.A.C. R1-6-301. Additionally, the Department certifies full compliance with the requirements provided under A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Senior Rules Analyst, at (602) 712-8804.

Sincerely,

John S. Halikowski  
Director

Enclosure



**Rules & Policy Development  
Office of the Director**

**Five-Year Review Report**

**A.A.C. Title 17 – Transportation**

**Chapter 1. Department of Transportation  
Administration**

**Article 1. General Provisions**

**Article 2. Fees**

**Article 3. Taxes**

**Article 5. Administrative Hearings**

**Article 6. Solicitation**

**Article 7. Advertising and Sponsorship Program**

***Doug Ducey***

***Governor***

***John S. Halikowski***

***ADOT Director***



**Governor’s Regulatory Review Council**  
**Five-Year-Review Report**  
**Arizona Department of Transportation**  
**17 A.A.C. Chapter 1, Administration, all Articles**

**1. Authorization of the rule by existing statutes**

General Statutory Authority:

The Director of the Department of Transportation (Department) has broad authority under A.R.S. §§ 28-366 and 28-7045 for these rules. This authority allows the Department to adopt rules for collection of taxes and license fees, public safety and convenience, enforcement of the provisions of the laws the Director administers or enforces, and the use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

Specific Statutory Authority:

A.R.S. §§ 1-243, 12-303, 28-101, 28-331(B), 28-363(A)(11), 28-366, 28-372, 28-446, 28-1321, 28-1385, 28-2151, 28-2161, 28-2162, 28-3301, 28-4500, 28-4802, 28-5924, 28-6532, 28-6533, 28-6538, 28-6540, 28-6542, 28-7059, 28-7316, 28-7913, 41-791(B)(4)(a)(i), 41-1023, 41-1033, 41-1061 through 41-1067, 41-1073, and 44-6852.

**2. The objective of each rule:**

The stated objectives for each rule maintained by the Department under 17 A.A.C. 1, are as follows:

**Article 1. General Provisions**

R17-1-102	This rule informs the public of the licensing time-frames established by the Department for each type of license the Department may issue more than seven days after initially receiving a license application. Licensing time-frames provide the period within which a person may expect the Department to either grant or deny issuance of a license.
Table A	This Table provides the administrative completeness, substantive review, and overall time-frames for all licenses issued by the Department’s Motor Vehicle Division more than seven days after receiving an initial application for a license.
Table B	This Table provides the administrative completeness, substantive review, and overall time-frames for all licenses issued by the Department’s Intermodal Transportation Division more than seven days after receiving an initial application for a license.
R17-1-103	The Department is mandated by statute, A.R.S. § 41-1033, to prescribe the manner and form by which a person may petition the agency to request the making of a final rule or a review of an existing agency practice or substantive policy statement that a petitioner alleges to constitute a rule. This rule provides the procedures a person may follow to

	request that the Department either make a final rule or review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.
R17-1-104	This rule provides members of the public with information regarding the process a person may use to request that the Department schedule an oral proceeding on a proposed rule and the protocol the Department will use while conducting an oral proceeding. The Department is mandated by statute, A.R.S. § 41-1023, to schedule an oral proceeding on a proposed rule if, within thirty days after the published notice of proposed rulemaking, a written request for an oral proceeding is submitted to the agency personnel listed pursuant to section 41-1021, subsection B.

**Article 2. Fees**

R17-1-201	This rule provides the definitions for terms used in this Article.
R17-1-203	This rule prescribes the returned check service charge and penalties that may accrue as the result of a returned check, draft, or order.
R17-1-204	This rule provides public notification of the postage fees assessed by the Department to an applicant for processing a vehicle registration, license plate, or registration renewal tab by mail.
R17-1-205	This rule provides the fees the Department may charge the owner of an abandoned vehicle under A.R.S. § 28-4802, and the fees the Department may charge a consumer, towing company, or business required to file an abandoned vehicle report in Arizona.

**Article 3. Taxes**

R17-1-346	This rule provides definitions for certain terms used in this Article to establish the formula and procedures necessary for the Department to determine what percentage of use fuel is consumed within each county each year. The result of which will become part of the more complicated statutory formula used by the Department to allocate, and the State Treasurer’s Office to distribute, essential Highway User Revenue Funds to each individual county as provided under Arizona Revised Statutes, Title 28, Chapter 18.
R17-1-347	This rule provides Arizona counties, cities, towns, and the general public with information regarding the formula used by the Department to calculate the percentage of use fuel that is actually being consumed within each county each month. The results of these calculations are then used as part of the more complicated statutory formula the Department must use to allocate, and the State Treasurer’s Office to distribute, essential Highway User Revenue Funds to each individual county as provided under Arizona Revised Statutes, Title 28, Chapter 18.

R17-1-348	This rule prescribes the procedure that each county engineer must use when submitting to the Department a summary letter certifying the exact number of county highway miles that are currently located within each county's jurisdiction. Penalties are also prescribed for an engineer's failure to provide the certified data required. Additionally, the rule provides the procedure and applicable timelines involved when one county seeks to challenge a report made by another county, including information regarding the hearing the Department will hold to resolve the challenge. The information collected from county engineers under this rule provides a critical element of the more complicated statutory formula the Department must use to allocate, and the State Treasurer's Office to distribute, essential Highway User Revenue Funds to each individual county as provided under Arizona Revised Statutes, Title 28, Chapter 18.
R17-1-349	This rule prescribes an annual effective date (July 1st) for the distribution calculation of estimated use fuel consumption.

**Article 5. Administrative Hearings**

R17-1-501	This rule provides the definitions for terms used in this Article.
R17-1-502	This rule provides the hearing request requirements and timeframes established by the Department for its Executive Hearing Office.
R17-1-503	This rule prescribes the information required to be included in the Department's Notice of Hearing.
R17-1-504	This rule prescribes the representation notification requirements for a hearing provided by the Department's Executive Hearing Office.
R17-1-505	This rule provides the protocol used by the Department's Executive Hearing Office in conducting hearings.
R17-1-506	This rule prescribes the type of evidence that may be offered in a hearing held by the Department's Executive Hearing Office and who shall bear any deposition and affidavit related costs.
R17-1-507	This rule prescribes the process used for determining timeliness.
R17-1-508	This rule prescribes the process for making and filing a motion at an Administrative Hearing.
R17-1-509	This rule provides the authority and process by which a party may request that an Administrative Law Judge issue a subpoena.

R17-1-510	This rule prescribes the requirements for all documents filed with the Department's Executive Hearing Office.
R17-1-511	This rule prescribes the continuance request requirements of the Department's Executive Hearing Office.
R17-1-512	This rule prescribes the Department's Executive Hearing Office rehearing and judicial review request requirements and timeframes.
R17-1-513	This rule provides the process used by the Department's Executive Hearing Office for summary review of a petitioner's administrative suspension order.
R17-1-514	This rule prescribes the administrative hearing code of conduct and the consequences for failing to comply with the code.

**Article 6. Solicitation**

R17-1-601	This rule provides the definitions for terms used in this Article.
R17-1-602	This rule clarifies the applicability of the rules in this Article by specifically exempting from the requirements enacted by the rules all state-authorized or state-sponsored employee programs expressly exempted by the Arizona Department of Administration under A.A.C. R2-11-309(A). Additionally, the rule specifically exempts any employee associations composed principally of employees of state government agencies from the requirements of R17-1-607 and R17-1-608, as applicable.
R17-1-603	This rule provides public notification of the application process required of persons seeking permission to conduct solicitation activities on Department property. Additionally, the rule enables the Department to require adequate security and/or liability insurance coverage when and where appropriate, and sets the criteria used by the Department to determine when adequate security and/or liability insurance coverage is necessary and in the best interest of the state.
R17-1-604	This rule provides public notification of the applicable time-frames in which the Department must determine the completeness of an application for permission to conduct solicitation activities on Department property, process the application, and then either issue or deny the requested permit.
R17-1-605	This rule provides public notification of the permit limitations set by the Department to ensure that solicitation activities do not disrupt the Department's regular business operations.
R17-1-606	This rule advises the public of the processes used by the Director to approve or deny issuance of a solicitation permit, determine whether grounds exist to deny issuance,

	provide appropriate notice to the applicant on denial of a permit, and inform an applicant of the right to request an administrative hearing if denied a permit.
R17-1-607	This rule prescribes the continuing responsibilities and prohibited activities of solicitors granted express written permission by the Director to conduct a solicitation on Department property.
R17-1-608	This rule provides public notification of the signage requirements expected of solicitors granted express written permission by the Director to conduct a solicitation on Department property.
R17-1-609	This rule advises the public of the processes used by the Director to immediately remove all solicitors and items of solicitation that may damage state property, inhibit building access or egress, or pose safety issues. The rule additionally provides the procedures used by the Director to revoke a solicitation permit, determine whether grounds exist to revoke a permit, and notify a solicitor of permit revocation, including information regarding the solicitor's right to request an administrative hearing on revocation of a permit.

**Article 7. Advertising and Sponsorship Program**

R17-1-701	This rule provides the definitions for terms used in this Article.
R17-1-702	This rule provides the public with information and operating requirements applicable to the Department, its authorized contractor, and any potential advertisers or sponsors seeking to help the Department generate additional revenue for the state highway fund. The rule also provides the public with specific citations to the state and federal laws that provide specific operating parameters that must be followed relative to the operation, modification, and termination of the Department's Advertising and Sponsorship Program.
R17-1-703	This rule provides advertisers, sponsors, and other potential contractors seeking to participate in the Department's advertising and sponsorship program with information on how to submit an online request for advertising and sponsorship opportunities made available by the Department. The rule also provides information on the process used by the Department for approving or denying such requests, and establishes reasonable time-frames for processing such requests.
R17-1-704	This rule provides information necessary for advertisers, sponsors, and other potential contractors who, once approved by the Department for participation in the program, must negotiate and enter into a written lease or agreement with the Department or its contractor before conducting such activities under these rules.

R17-1-705	This rule provides the process and guidelines that authorized advertisers, sponsors, and other contractors must use when seeking to obtain Department approval of any advertising and sponsorship content permitted under these rules, before such content is displayed on any asset or facility designated by the Department.
R17-1-706	This rule provides advertisers, sponsors, and other potential contractors with information regarding the types of content prohibited by the Department, and which content the Department may reject as deemed unacceptable for participation in its advertising and sponsorship program.
R17-1-707	This rule provides the procedures to be used by the Department if denying a request from an advertiser or sponsor for placement of advertising or sponsorship content in connection with these rules. The rule also provides an opportunity for an administrative hearing, and the procedure an advertiser or sponsor may use to request a hearing in connection with the denial.
R17-1-708	This rule provides advertisers and sponsors with information on the competitive pricing and rate schedules to be used by the Department or its contractor and outlines the factors that may be used to determine a clear ranking order of preference when the Department receives multiple requests for advertising and sponsorship opportunities in a single location.
R17-1-709	This rule provides advertisers, sponsors, and other potential contractors with information about the design and placement of certain types of signing that can be used on a highway for sponsorship acknowledgement if the signs are placed in conformance with the referenced guidelines provided by the Federal Highway Administration.
R17-1-710	This rule provides the procedures that the Department and its contractor shall follow to ensure that the Department remains in full compliance with all applicable Federal Highway Administration regulations, policies, and guidelines regarding the placement of all acknowledgement signs and plaques.
R17-1-711	This rule provides advertisers, sponsors, and other potential contractors with clarification on the types of facilities the Department deems suitable for advertising and sponsorship activities, establishes reasonable time, place, and manner restrictions necessary to protect the public health, peace, and safety, and ensures that the Department remains in compliance with the Federal Highway Administration's policies on sponsorship acknowledgment, sponsorship agreements, and outdoor advertising control.

R17-1-712	This rule provides advertisers, sponsors, and other potential contractors with information regarding the Department's Advertising and Sponsorship program eligibility and compliance.
R17-1-713	This rule provides advertisers and sponsors with clarification regarding the duties and responsibilities required of the advertiser or sponsor on termination of an advertising or sponsorship agreement or lease.
R17-1-714	This rule provides advertisers, sponsors, and other potential contractors with information regarding the removal of all advertising or sponsorship content if the Department's program is either temporarily affected or permanently terminated.

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

*If not, please identify the rules that are not effective and provide an explanation for why the rules are not effective.*

Rule	Explanation
N/A	N/A

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

*If not, please identify the rules that are not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rules.*

Rule	Explanation
R17-1-102	This rule is generally consistent with state statutes and other rules made by the Department, except that the paragraph numbers should be removed from each statutory reference. The term "License" under A.R.S. § 41-1001 was renumbered. No federal statutes are applicable to this rule.
Table A	This Table is generally consistent with state statutes and other rules made by the Department, except that the licensing time-frames stated under Alternative Proportional Registration should be lowered from 90 days to 60 days to reflect changes made by Laws 2016, Ch. 52, regarding the temporary registration permit the Department issues to a motor carrier while awaiting receipt of a permanent or replacement registration after adding a vehicle to an existing fleet. Additionally, the statutory references provided under: Professional Driver Training School or Professional Driver Training School Instructor License, should read A.R.S. §§ 32-2351 to 32-2394; Traffic Survival School or Traffic Survival School Instructor License, should read A.R.S. §§ 28-3411 to 28-3418; and License to Operate as a

	Title Service Company, should be amended to remove the obsolete statutory reference to A.R.S. § 28-5003. No federal statutes are applicable to this rule.
R17-1-346	This rule is generally consistent with state statutes and other rules made by the Department, except that the procedures provided under this Article are no longer delegated to the Assistant Director of the Motor Vehicle Division. The procedures are now performed by the Department in conformance with Arizona Revised Statutes, Title 28, Chapter 18, Article 2. The statutory reference to A.R.S. § 28-1598 must be updated to read A.R.S. § 28-6531. No federal statutes are applicable to this rule.
R17-1-347	This rule is generally consistent with state statutes and other rules made by the Department, except that the procedures provided under this Article are no longer delegated to the Assistant Director of the Motor Vehicle Division. The procedures are now performed by the Department in conformance with Arizona Revised Statutes, Title 28, Chapter 18, Article 2. No federal statutes are applicable to this rule.
R17-1-348	This rule is generally consistent with state statutes and other rules made by the Department, except that the procedures provided under this Article are no longer delegated to the Assistant Director of the Motor Vehicle Division. The procedures are now performed by the Department in conformance with Arizona Revised Statutes, Title 28, Chapter 18, Article 2. The statutory references to A.R.S. § 28-1598 must be updated to read A.R.S. § 28-6540. No federal statutes are applicable to this rule.
R17-1-349	This rule is generally consistent with state statutes and other rules made by the Department, except that the procedures provided under this Article are no longer delegated to the Assistant Director of the Motor Vehicle Division. The procedures are now performed by the Department in conformance with Arizona Revised Statutes, Title 28, Chapter 18, Article 2. The statutory reference to A.R.S. § 28-1598 must be updated to read A.R.S. § 28-6540. No federal statutes are applicable to this rule.

**5. Are the rules enforced as written?**

Yes X No \_\_\_

*If not, please identify the rules that are not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issues.*

Rule	Explanation
N/A	N/A

6. **Are the rules clear, concise, and understandable?**

Yes \_\_\_ No X

*If not, please identify the rules not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rules to improve clarity, conciseness, and understandability.*

The Department intends to further clarify the following rules by making minor technical corrections that may provide additional regulatory relief for some of the industry and ensure that the rules are more clear, concise, and understandable.

R17-1-102	These rules generally meet objectives, are effective, consistent with statute, and enforceable. However, necessary technical amendments identified by the Department include updating references to statutory authority, inserting new licensing time-frames established by rule since the Table was last updated, and ensuring conformity with the Administrative Procedure Act and the rulemaking format and style requirements of the Secretary of State’s Office. All terms currently defined under subsection (A) should be moved to a new definitions Section under R17-1-101, where the statutory citation for the term “license” will be amended to read A.R.S. § 41-1001, and the statutory citations for the remaining terms will be amended to read A.R.S. § 41-1072.
Table A	The statutory authority reference under “traffic survival school or traffic survival school instructor license” should be changed to read A.R.S. §§ 28-3411 to 28-3418. The statutory authority reference under “professional driver training school or professional driver training school instructor license” should be updated to include A.R.S. § 32-2394. The reference to a “license to operate as a title service company” is obsolete and should be removed.
Table B	The statutory authority reference under “encroachment permit” should be changed to read A.R.S. §§ 28-7045 and 28-7053.
R17-1-346	This Section should be renumbered as R17-1-301 and retitled to read Definitions. An introductory paragraph should be added to reference the statutory definitions already provided under A.R.S. § 28-6531, which will eliminate the need to define the term “Population” by rule. Additionally, the definition of “Assistant Director” should be removed as it will no longer be used in the Article.
R17-1-347	This Section should be renumbered as R17-1-302 and the reference to the Motor Vehicle Division under subsection (A) should be deleted and replaced with the term “Department” to reflect organizational changes made within the Department.
R17-1-348	This Section should be renumbered as R17-1-303 and any reference to the terms Motor Vehicle Division or the Assistant Director should be updated to reflect either the

	Department or the Director as applicable. These procedures are now performed by the Department in conformance with Arizona Revised Statutes, Title 28, Chapter 18, Article 2. Any statutory reference to A.R.S. § 28-1598 should be updated to read A.R.S. § 28-6540.
R17-1-349	This Section should be renumbered as R17-1-304 and the statutory reference to A.R.S. § 28-1598 should be updated to read A.R.S. § 28-6540.
R17-1-501	This Section should be amended to reference the statutory definitions already provided under A.R.S. §§ 28-101 and 41-1001, and to update existing definitions for added clarity.
R17-1-502	This Section should be renumbered to reflect a more logical order. Amendments should be made to reflect the current address and process a person may use to request a hearing with the Department’s Executive Hearing Office, and to provide additional clarification regarding the timelines used by the Office for determining whether or not a request is timely filed.
R17-1-503	This Section should be renumbered to reflect a more logical order. Amendments should be made to provide additional clarification on the content of the notices issued by the Executive Hearing Office.
R17-1-504	This Section should be renumbered to reflect a more logical order. Amendments should be made to incorporate any necessary changes that may be required to implement a Notice of Appearance requirement and process in compliance with Arizona Supreme Court Rule 39.
R17-1-505	This Section should be renumbered to reflect a more logical order. Amendments should be made for clarification purposes by providing some new references to existing statutes, updating all existing statutory references, and adding other relevant information regarding the Department’s administrative hearing procedures.
R17-1-506	This Section should be renumbered to reflect a more logical order. Amendments should be made to provide additional clarity regarding the admission of evidence offered in an administrative hearing.
R17-1-507	This Section should be renumbered to reflect a more logical order. Amendments should be made to provide clarity on how time periods are calculated.
R17-1-508	This Section should be renumbered to reflect a more logical order. Amendments should be made to provide additional clarity regarding the motion practice procedure.
R17-1-509	This Section should be renumbered to reflect a more logical order. Amendments should be made to incorporate any changes that may be necessary as a result of recent

	amendments made to the Arizona Rules of Civil Procedure or the updated Supreme Court rules that became effective in January of 2018.
R17-1-510	This Section should be renumbered to reflect a more logical order. Amendments should be made to incorporate any changes that may be necessary to facilitate the electronic filing or submission of certain notices and other hearing related documents to and from the Department's Executive Hearing Office.
R17-1-511	This Section should be renumbered to reflect a more logical order.
R17-1-512	This Section should be renumbered to reflect a more logical order. Amendments should be made to update existing statutory citations, clarify existing language, and provide consistency in the use of certain terms throughout the Article.
R17-1-513	This Section should be renumbered to reflect a more logical order. Amendments should be made to update all existing statutory citations, provide conformance with current statutory language, clarify some existing language, and provide consistency in the use of certain terms throughout the Article.
R17-1-514	This Section should be renumbered to reflect a more logical order.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No X

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
N/A	N/A	N/A

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

The economic impact of each of these rules has been the same as estimated by the Department in the economic impact statement prepared on the last amendment of each rule.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

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

Yes \_\_\_ No X Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

**Article 1. General Provisions:** The Department did not complete the course of action indicated in the previous five-year review report for the following rules:

- R17-1-102. Licensing Time-frames
  - Table A. Motor Vehicle Division
  - Table B. Intermodal Transportation Division

The Department remained committed to amending the rules as indicated in its previous five-year review report and anticipated that all indicated amendments would be completed by final rulemaking before December 31, 2014.

On October 9, 2013, the Department requested permission from the Governor's Office to proceed with this rulemaking. On March 25, 2014, having received no response to that request, the Department submitted a second request for permission to proceed with amendments to improve rule clarity, conciseness, and understandability. However, since all of the indicated amendments (to correct statutory references, replace outdated terminology, and update the Tables) were noncritical and did not have a significant impact on the enforceability of the rules, the Governor's Office did not agree that the requested changes were necessary at that time. Since the indicated amendments would have only codified missing timeframes that were already provided in other Sections, the Department determined that the anticipated rulemaking did not reach the level of importance needed to submit a third request to the Governor's Office seeking special permission to proceed with the rulemaking while under the rulemaking moratorium.

**Article 3. Taxes:** The Department did not complete the course of action indicated in the previous five-year review report for the following rules because the indicated amendments were noncritical and did not have a significant impact on the enforceability of the rules. The indicated amendments (to provide additional clarification, update statutory references, and ensure conformity with rulemaking format and style requirements) were intended only to improve rule clarity, conciseness, and understandability, and at that time did not rise to the level of importance necessary for the Department to seek special permission from the Governor's Office to proceed with the rulemaking while under the rulemaking moratorium.

R17-1-346. Procedure to estimate use fuel consumption

R17-1-347. Procedure to estimate percentage of consumption of use fuel in each county

R17-1-348. Requirements to provide data pertaining to county highway miles

R17-1-349. Period of applicability

The Department's previously stated course of action indicated that amendments would be completed on these four rules by July 1, 2015, to update statutory citations and make the rules more clear, concise, and understandable. The Department did initially request permission from the Governor's Office, dated November 17, 2014, to move forward with the anticipated amendments to this rule, but that request was never approved and the amendments have not been completed. The Department will request permission from the Governor's Office to complete the necessary amendments by expedited rulemaking on Council approval of this report.

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

The Department has determined that the benefits of all rules in this Chapter outweigh the costs.

**Article 1. Administration:** In rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. Costs to persons regulated by the rules in this Article are minimal and include the costs associated with completing a license application and providing the Department with all required documentation in support of the license application. The Department believes that these rules impose no significant burden or costs to persons regulated by the rules other than the minimal costs involved with any necessary correspondence between the Department and the license applicant. The probable benefits of the rules outweigh the probable costs of the rules.

**Article 2. Fees:** The Department believes that the direct costs imposed on persons regulated by these rules represent the minimum amount currently charged by industry. All of the burden and costs associated with the rules are avoidable and authorized by statute under A.R.S. § 44-6852. Therefore, the probable benefits of these rules outweigh the probable costs of the rules. The Department has no other method for reducing the impact on small businesses or consumers having insufficient funds to cover dishonored checks, drafts, orders, or electronic payments for services provided by the Department.

**Article 3. Taxes:** These rules provide the long-established formula used by the Department to further calculate each county's allocation of the state's Highway User Revenue Fund (HURF) as required under A.R.S. § 28-6540. This calculation represents a small, but important, element of the more complicated formulas used by the Department to allocate all revenues credited to the HURF for distribution to each individual county by the State Treasurer's Office, as provided under A.R.S. § 28-6540. HURF is the account in which all state taxes collected on motor vehicle fuel (gasoline) and use fuel (diesel) are deposited. The tax rate levied is \$0.18 per gallon on motor vehicle fuel sold in the state. Use fuel tax is levied at \$0.18 per gallon when used in a light class vehicle and at \$0.26 per gallon when used in a use class vehicle, as prescribed under A.R.S. § 28-5606(B). The primary purpose of HURF distribution is to fund the construction and maintenance of Arizona's extensive transportation infrastructure.

Although each individual county's allocation of HURF revenue is generally calculated based on population estimates, as prescribed under A.R.S. § 28-6532, the Department is required under A.R.S. § 28-6540 to factor in all reported sales of motor vehicle fuel and the estimated consumption of use fuel each county bears to the total sales of motor vehicle fuel and the estimated consumption of use fuel throughout the state during the preceding calendar month. The reporting of county highway miles under these rules is necessary in support of the Department's obligation to ensure that essential highway funding is being directed to the areas of the state where the largest amount of use fuel is actually being consumed.

Since the reporting of county highway miles under these rules is accomplished electronically each month, and the information required to be reported is information readily available to each county engineer charged with

maintaining such information, the Department believes that the benefits of these rules far outweigh the costs the rules may impose on any county.

**Article 5. Administrative Hearings:** As these rules apply existing laws and regulations for hearing and appeal rights of an individual subject to an adverse action by the Department, the Department ensures that the rules are applied consistently regardless of business type. The Department believes that the probable benefits of the rules in this Article outweigh the probable costs.

**Article 6. Solicitation:** In rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. Costs to persons regulated by the rules are minimal and include the costs associated with completing the application process, providing the Department with copies of all solicitation materials, and supplying appropriate equipment and signage for solicitation activities.

**Article 7. Advertising and Sponsorship Program:** All costs incurred by the Department and any advertiser or sponsor participating in the Department's advertising and sponsorship program are paid under agreements negotiated between the Department and the advertisers or sponsors who seek to join the Department in providing motor vehicle- and motorist-related goods, services, and information directly to the motoring public throughout the state.

**12. Are the rules more stringent than corresponding federal laws? Yes \_\_\_ No X**

*Please provide a citation for the federal laws. And if the rules are more stringent, is there statutory authority to exceed the requirements of federal laws?*

All of the rules contained in this Chapter are either in conformance with corresponding federal laws, or no corresponding federal law exists.

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Each regulatory permit, license, or agency authorization provided by the Department under these rules is specifically authorized by statute and falls within the criteria provided under A.R.S. § 41-1037.

**14. Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

**Article 1. General Provisions:** On receiving Council approval and permission from the Governor's Office to proceed with expedited rulemaking, the Department anticipates completion of all amendments indicated for this Article under Item 6, before December 31, 2019.

**Article 2. Fees:** No action is necessary. All rules located in this Article currently meet objectives, are effective, consistent with statute, enforceable, clear, concise, and understandable. The Department proposes no immediate action for any of the rules under this Article.

**Article 3. Taxes:** All rules located in this Article contain procedures currently used in the calculation and distribution of Arizona Highway User Revenues under A.R.S. Title 28, Chapter 18. However, as indicated in its previous five-year review report, the Department intends to amend the rules by updating references to statutory authority and ensuring conformity with the Administrative Procedure Act and the rulemaking format and style requirements of the Secretary of State's Office. On receiving Council approval and permission from the Governor's Office to proceed with expedited rulemaking, the Department anticipates completion of all amendments indicated for this Article under Item 6, before December 31, 2019.

**Article 5. Administrative Hearings:** No action is necessary. All rules located in this Article were last amended by Final Rulemaking at 13 A.A.R. 4598, effective February 3, 2008, and generally meet objectives, are effective, consistent with statute, enforceable, clear, concise, and understandable. The Department proposes no immediate action for any of the rules under this Article.

However, the Department will consider completing all of the amendments indicated under Item 6, if the Department determines that substantive amendments are necessary to align the rules with recent changes made to the Supreme Court rules or the Arizona Rules of Civil Procedure involving electronic discovery and electronically stored information.

**Article 6. Solicitation:** No action is necessary. All rules located in this Article were last made by Final Rulemaking at 17 A.A.R. 1995, effective September 13, 2011, and currently meet objectives, are effective, consistent with statute, enforceable, clear, concise, and understandable. The Department proposes no immediate action for any of the rules under this Article.

**Article 7. Advertising and Sponsorship Program:** No action is necessary. All rules located in this Article were last amended by Final Rulemaking at 24 A.A.R. 673, effective May 7, 2018, and currently meet objectives, are effective, consistent with statute, enforceable, clear, concise, and understandable. The Department proposes no immediate action for any of the rules under this Article.

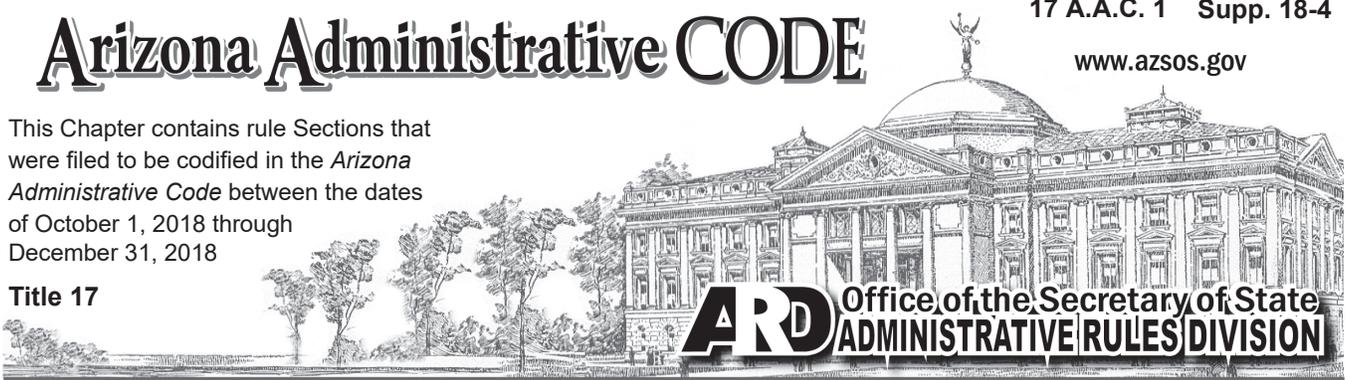
# Arizona Administrative CODE

17 A.A.C. 1 Supp. 18-4

www.azsos.gov

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

## Title 17



## TITLE 17. TRANSPORTATION

### CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION

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

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

<a href="#">R17-1-201.</a>	<a href="#">Definitions .....</a>	<a href="#">6</a>	<a href="#">Table 1.</a>	<a href="#">Repealed .....</a>	<a href="#">6</a>
<a href="#">R17-1-202.</a>	<a href="#">Repealed .....</a>	<a href="#">6</a>			

#### Questions about these rules? Contact:

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Web site: <http://www.azdot.gov/about/GovernmentRelations>

#### The release of this Chapter in Supp. 18-4 replaces Supp. 18-1, 26 pages

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

## PREFACE

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

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

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

### THE ADMINISTRATIVE CODE

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

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

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

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

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

### AUTHENTICATION OF PDF CODE CHAPTERS

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

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

### HOW TO USE THE CODE

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

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

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

### EXEMPTIONS FROM THE APA

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

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

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

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

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

### EXEMPTIONS AND PAPER COLOR

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

### PERSONAL USE/COMMERCIAL USE

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

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



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

**TITLE 17. TRANSPORTATION**

**CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION**

*Editor's Note: Some Sections in 17 A.A.C. 1 expired on February 28, 2014, but were not removed in Supp. 14-2. This Chapter has since been updated with the removal of the expired Sections as filed by the Governor's Regulatory Review Council on May 7, 2015, file number R14-70. The expired Sections include: R17-1-206, R17-1-306, R17-1-309, R17-1-316, R17-1-317, and R17-1-330 (Supp. 18-4).*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Section R17-1-101 and Table A, recodified from 17 A.A.C 4 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1).*

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*Article 4, consisting of Sections R17-1-401 through R17-1-407, made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3).*

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## CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION

**ARTICLE 1. GENERAL PROVISIONS****R17-1-101. Recodified****Historical Note**

New Section recodified from R17-4-710 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1). Former Section R17-1-101 recodified to R17-1-102 at 7 A.A.R. 3476, effective July 20, 2001 (Supp. 01-3).

**Table A. Recodified****Historical Note**

New Table recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1). Former Table A recodified to R17-1-102, Table A, at 7 A.A.R. 3476, effective July 20, 2001 (Supp. 01-3).

**R17-1-102. Licensing Time-frames**

- A.** Time-frames. The time-frames listed in Tables A and B apply to licenses issued by the Department.
1. "Department" means the Arizona Department of Transportation.
  2. "License" has the meaning prescribed in A.R.S. § 41-1001(10).
  3. "Administrative completeness review time-frame" has the meaning prescribed in A.R.S. § 41-1072(1).
  4. "Overall time-frame" has the meaning prescribed in A.R.S. § 41-1072(2).
  5. "Substantive review time-frame" has the meaning prescribed in A.R.S. § 41-1072(3).
- B.** Administrative completeness review – notice of deficiency. Within the time-frame for the administrative completeness review listed in Tables A and B, the Department shall notify the applicant in writing that the application is complete or incomplete. If the application is incomplete, the Department shall issue a notice of deficiency to the applicant specifying the information required to make the application administratively complete.
1. The notice of deficiency shall list all missing information.
  2. A notice of deficiency issued by the Department within the administrative completeness review time-frame suspends the administrative completeness review time-frame and the overall time-frame, from the date the Department issues the notice of deficiency until the date that the Department receives all missing information from the applicant.
- C.** Denial during administrative completeness review.
1. If the applicant does not withdraw the application and does not respond, within 60 days after the date on a notice of deficiency issued under subsection (B), to each item listed in the notice of deficiency, the Department shall treat the application as withdrawn. The Department shall not issue a written notice of denial.
  2. The applicant may withdraw the application during the 60-day response period. If the applicant withdraws the application, the Department shall not issue a written notice of denial. If the applicant wishes to obtain a license after withdrawal of the application, an applicant shall submit a new application.

3. The Department may issue a written notice of denial to an applicant before finding administrative completeness if the information provided by the applicant demonstrates that the applicant is not eligible for a license under the relevant statute or rules.
4. The notice of denial shall provide a justification for the denial and an explanation of the applicant's right to a hearing or appeal.

- D.** Substantive review – additional information. Within the time-frame for the substantive review listed in Tables A and B, the Department may issue a comprehensive request for additional information, or by mutual agreement with the applicant, issue a supplemental request for additional information.
1. Any request for additional information shall list all items of information required.
  2. Any request for additional information issued by the Department within the substantive review time-frame suspends the substantive review time-frame and overall time-frame, from the date the Department issues the request until the date that the Department receives all the required additional information from the applicant.
- E.** Denial during substantive review. The following provisions apply:
1. If the applicant does not withdraw the application and does not respond, within 60 days after the date on a request for additional information under subsection (D), to each item required by the request, the Department shall treat the application as withdrawn. The Department shall not issue a written notice of denial.
  2. The applicant may withdraw the application during the 60-day response period. If the applicant withdraws the application, the Department shall not issue a written notice of denial. If the applicant wishes to obtain a license after withdrawal of an application, an applicant shall submit a new application.
  3. The notice of denial shall provide a justification for the denial and an explanation of the applicant's right to a hearing or appeal.
- F.** Notification after substantive review. Upon completion of the substantive review, the Department shall notify the applicant in writing that the license is granted or denied within the overall time-frames listed in Tables A and B. The notice of denial shall provide a justification for the denial and an explanation of the applicant's right to a hearing or appeal.
- G.** Applicant response period. In computing the applicant's response periods prescribed in this Section, the last day of a response period is counted. If the last day is a Saturday, Sunday, or legal holiday, the applicant's response period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- H.** Effective date. This Section applies to applications filed with the Department on or after the effective date of this Section.

**Historical Note**

New Section R17-1-102 recodified from R17-1-101 by final rulemaking at 7 A.A.R. 3476, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4347, effective September 9, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 923, effective February 11, 2002 (Supp. 02-1).

## CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION

**Table A. Motor Vehicle Division**

LICENSE	STATUTORY AUTHORITY	ADMINISTRATIVE COMPLETENESS REVIEW TIME-FRAME	SUBSTANTIVE REVIEW TIME-FRAME	OVERALL TIME-FRAME
Fleet registration	A.R.S. §§ 28-2201 to 28-2208	60 days	30 days	90 days
International proportional registration	A.R.S. §§ 28-2231 to 28-2239	20 days	10 days	30 days
Alternative proportional registration	A.R.S. § 28-2261 to 28-2269	60 days	30 days	90 days
Personalized special plates	A.R.S. § 28-2406	5 days	30 days	35 days
Traffic survival school or traffic survival school instructor license	A.R.S. §§ 28-3306 to 28-3307	5 days	35 days	40 days
Driver license issued after suspension, revocation or disqualification	A.R.S. § 28-3315	5 days	30 days	35 days
Automotive recycler, broker, motor vehicle dealer or wholesale motor vehicle dealer license	A.R.S. §§ 28-4301 to 28-4366	8 days	117 days	125 days
Manufacturer, distributor, factory branch, or distributor branch license	A.R.S. §§ 28-4301 to 28-4366	6 days	14 days	20 days
Permit to exhibit or display and sell vehicles off dealer's premises	A.R.S. § 28-4401	6 days	9 days	15 days
Permit to exhibit recreational vehicles at public event	A.R.S. § 28-4402	6 days	9 days	15 days
Authorization to use dealer license plates	A.R.S. § 28-4533	7 days	38 days	45 days
Authorization to dispose of junk vehicle	A.R.S. § 28-4882	5 days	45 days	50 days
License to operate as a title service company	A.R.S. § 28-5003	6 days	14 days	20 days
Third-party authorization to perform certain title and registration, motor carrier licensing and tax reporting, dealer licensing, and driver license functions*	A.R.S. §§ 28-5101 to 28-5110	5 days	90 days	95 days
Third-party authorization to issue over-weight and over-dimensional permits*	A.R.S. §§ 28-1145 and 28-5101 to 28-5110	5 days	90 days	95 days
Certification of an authorized third party, or the authorized third party's employee or agent, to perform the authorized functions	A.R.S. §§ 28-5101 to 28-5110	5 days	60 days	65 days
Professional driver training school or professional driver training school instructor license	A.R.S. §§ 32-2351 to 32-2393	5 days	35 days	40 days

\* The Division shall have the right to determine when an authorized third party may begin to transact business after a license has been granted.

**Historical Note**

New Table A recodified from R17-1-101, Table A, by final rulemaking at 7 A.A.R. 3476, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4347, effective September 9, 2001 (Supp. 01-3).

CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION

**Table B. Intermodal Transportation Division**

LICENSE	STATUTORY AUTHORITY	ADMINISTRATIVE COMPLETENESS REVIEW TIME-FRAME	SUBSTANTIVE REVIEW TIME- FRAME	OVERALL TIME-FRAME
Outdoor advertising permit	A.R.S. §§ 28-7901 to 28-7909	30 days	30 days	60 days
Encroachment permit	A.R.S. §§ 28-7053(A), 7053(D), 7045(2)	30 days	120 days	150 days
Junkyard screening license	A.R.S. §§ 28-7941 to 28-7943	30 days	60 days	90 days

**Historical Note**

New Table B made by final rulemaking at 7 A.A.R. 4347, effective September 9, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 923, effective February 11, 2002 (Supp. 02-1).

**R17-1-103. Petition for Department Rulemaking or Review**

- A. A person may petition the Department under A.R.S. § 41-1033(A) for a:
  - 1. Rulemaking action relating to a Department rule, including making a new rule or amending or repealing an existing rule; or
  - 2. Review of an existing Department practice or substantive policy statement alleged to constitute a rule.
- B. To act under A.R.S. § 41-1033(A) and this Section, a person shall submit to the Department Director a written petition that includes the following information:
  - 1. Name, address, telephone number, and facsimile number, if any, of the person submitting the petition;
  - 2. If the person submitting the petition is a representative of another person, the name of each person represented;
  - 3. If requesting a rulemaking action:
    - a. A statement of the rulemaking action sought, including the A.A.C. citation for each existing rule involved, and the specific language of each new rule or rule amendment; and
    - b. Reasons for the rulemaking action, including an explanation of why an existing rule is inadequate, unreasonable, unduly burdensome, or unlawful.
  - 4. If requesting a review of an existing practice or substantive policy statement:
    - a. The subject matter of the existing practice or substantive policy statement, and
    - b. Reasons why the existing practice or substantive policy statement constitutes a rule.
  - 5. The dated signature of the person submitting the petition.
- C. A person may submit supporting information with a petition, including:
  - 1. Statistical data; and
  - 2. A list of other persons likely to be affected by the rulemaking action or the review, with an explanation of the likely effects.
- D. The Department Director or the director’s authorized representative shall send the person submitting a petition a written response within 60 calendar days of the date the Department receives the petition.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5437, effective November 14, 2001 (Supp. 01-4).

**R17-1-104. Rulemaking Oral Proceeding**

- A. Public request for an oral proceeding. A person may request an oral proceeding as prescribed under A.R.S. § 41-1023(C) by submitting the following information in writing to the agency official identified in a proposed rule’s preamble:

- 1. Identify the specific proposed rule for oral proceeding by Section number and title heading; and
- 2. Provide the following requestor information:
  - a. Name;
  - b. Address;
  - c. Telephone number during regular state business hours as prescribed under A.R.S. § 38-401; and
  - d. Optional information, if applicable:
    - i. The requestor’s occupational title; and
    - ii. The name of the entity the requestor represents.
- B. Oral proceeding protocol.
  - 1. The Department shall record an oral proceeding electronically or stenographically, and shall make any audio or video cassette, transcript, register, and written comment received part of the Department’s rulemaking record as required under A.R.S. § 41-1029(B)(4) and (5).
  - 2. The Department’s presiding official shall use the following guidelines to conduct an oral proceeding:
    - a. Registration of attendees. Attendee registration is voluntary;
    - b. Registration of persons intending to speak. A person wishing to speak shall provide the person’s name, representative capacity, if applicable, a brief statement of the person’s position regarding the proposed rule, and approximate length of time the person wishes to speak;
    - c. Opening of the record. The Department’s presiding official shall identify:
      - i. The rule to be considered;
      - ii. The location;
      - iii. The date;
      - iv. The time of day;
      - v. The purpose of the proceeding including applicable background information or Department representative’s opening statement on the proposed rule; and
      - vi. Any applicable time limitation of the meeting location’s use or electronic communication linkage.
    - d. A public oral comment period. Any person may speak at an oral proceeding. A person who speaks shall ensure that all comments address the rule being considered. The Department’s presiding official may limit the time allotted to each speaker and preclude undue repetition;
    - e. A recess provision. If an oral proceeding must recess because of a time limitation indicated in subsection (B)(2)(c)(vi), the Department’s presiding official shall ensure that the oral proceeding’s continuation

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- complies with the meeting notice provision prescribed under A.R.S. § 38-431.02(E);
- f. Closing remarks. Before closing an oral proceeding record, the Department's presiding official shall announce:
- The location and last day for submitting written comments about the rule; and
  - Any known future rulemaking steps the Department intends to take regarding the rule after the rulemaking public record closes.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4920, effective January 5, 2003 (Supp. 02-4).

**ARTICLE 2. FEES****R17-1-201. Definitions**

In addition to the definitions prescribed under A.R.S. § 44-6851, the following terms apply to this Article:

"Automated clearing house" has the same meaning as provided under A.A.C. R17-8-401.

"Electronic payment" means money which is exchanged electronically, including credit card payments, credit transfer, electronic checks, direct debit, and person-to-person payments.

"Stale-dated" means a check presented at the paying bank six months or more after the issue date of the check. A stale-dated check is not an invalid check, but the paying bank may deem the check an irregular bill of exchange and return it unpaid.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 2963, effective June 27, 2002 (Supp. 02-2). Amended by exempt rulemaking at 13 A.A.R. 3041, effective August 31, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 1994, effective November 13, 2010 (Supp. 10-3). Amended by final expedited rulemaking at 24 A.A.R. 3495, effective December 4, 2018 (Supp. 18-4).

**R17-1-202. Repealed****Historical Note**

New Section recodified from R17-4-702 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 2963, effective June 27, 2002 (Supp. 02-2). Amended by exempt rulemaking at 10 A.A.R. 4845, effective November 18, 2004 (Supp. 04-4). Amended by exempt rulemaking at 11 A.A.R. 3124, effective July 20, 2005 (Supp. 05-3). Amended by exempt rulemaking at 13 A.A.R. 3041, effective August 31, 2007 (Supp. 07-3). R17-1-202 repealed by final expedited rulemaking at 24 A.A.R. 3495, effective December 4, 2018 (Supp. 18-4).

**Table 1. Repealed****Historical Note**

Table 1 made by exempt rulemaking at 13 A.A.R. 3041, effective August 31, 2007 (Supp. 07-3). Table 1 repealed by final expedited rulemaking at 24 A.A.R. 3495, effective December 4, 2018; Historical note added to clarify when Table 1 was made (Supp. 18-4).

**R17-1-203. Dishonored Payments; Fees and Charges; Penalties**

- A. In addition to the original payment amount, the maker or drawer of a check, draft, order, or electronic payment dishonored because of insufficient monies, payments stopped, or closed accounts shall pay to the Department:

- A service fee of \$25 as provided under A.R.S. §§ 28-372 and 44-6852,
  - Any actual charges assessed to the Department by a financial institution as a result of the dishonored instrument, and
  - Any collection costs due to the Department under A.R.S. § 28-372.
- B. For a check, draft, or order dishonored:
- Insufficient monies include:
    - A check written for less than the minimum amount due,
    - A check drawn against uncollected funds,
    - A check post-dated, or
    - A check stale-dated;
  - Payments stopped include an item marked refer to maker, and
  - Closed accounts include an item marked unable to locate account.
- C. For an electronic payment dishonored:
- Insufficient monies include:
    - A credit limit exceeded,
    - An e-check or other electronic payment failure, or
    - An inaccurate automated clearing house transaction,
  - Payments stopped include a credit card charge back, and
  - Closed accounts include an item marked unable to locate account.
- D. Payments, fees, and charges due to the Department under subsection (A), shall be made by:
- Cash, cashier's check, money order, or credit card for a dishonored check, draft, or order; or
  - Cash, cashier's check, or money order for a dishonored electronic payment.
- E. Penalties.
- A person who does not make payment under subsection (A) on or before the vehicle's registration expiration date is subject to a late title and registration penalty as prescribed under A.R.S. § 28-2162.
  - A person who does not make payment under subsection (A) within 45 days after the date of a written Department notice of a dishonored check, draft, order, or electronic payment is subject to the following actions on the person's license, permit, or registration that was insufficiently funded:
    - For a driver license or permit, as prescribed under A.R.S. § 28-3301(A);
    - For a nonoperating identification license, as prescribed under A.R.S. § 28-3301(F); or
    - For a vehicle registration, as prescribed under A.R.S. § 28-2161(A)(2).

**Historical Note**

New Section recodified from R17-4-707 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 3822, effective October 4, 2003 (Supp. 03-3). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1994, effective November 13, 2010 (Supp. 10-3).

**R17-1-204. MVD Postage Fund; Registration by Mail Charges**

- A. For purposes of A.R.S. § 28-2151, the Division establishes a registration by mail postage fund.
- B. The Division shall charge a registration by mail applicant current applicable U.S. Postal Service postage rates for mailing:
- A registration by mail renewal notice,
  - A license plate, or
  - A registration tab.

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**Historical Note**

New Section recodified from R17-4-703 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-1-205. Abandoned Vehicle Fees**

- A. The Department establishes the following fees under A.R.S. § 28-4802 for the transfer of ownership or disposal of an abandoned vehicle:
1. The fee is \$500 if the vehicle was abandoned as described under A.R.S. § 28-4802(A), and
  2. The fee is \$600 if the vehicle was abandoned as described under A.R.S. § 28-4802(B).
- B. The Department establishes the following fees under A.R.S. § 28-4802 for processing an abandoned vehicle report:
1. The fee is \$8 if the report is submitted electronically, via the Department's authorized third-party electronic service provider; and
  2. The fee is \$10 if the report is submitted for processing by any other means.
- C. The fee for processing the abandoned vehicle report is non-refundable unless provided for under A.R.S. § 28-373.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 3746, effective September 30, 2003 (Supp. 03-3). Amended by exempt rulemaking at 17 A.A.R. 297, effective March 1, 2011 (Supp. 11-1).

**R17-1-206. Expired****Historical Note**

New Section made by exempt rulemaking at 14 A.A.R. 4046, effective October 24, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 1232, effective February 28, 2014 (Supp. 18-4).

**ARTICLE 3. TAXES****R17-1-301. Renumbered****Historical Note**

Renumbered from R17-4-301 (Supp. 92-4).

**R17-1-302. Repealed****Historical Note**

Adopted effective August 1, 1988 (Supp. 88-3). Renumbered from R17-4-302 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-303. Renumbered****Historical Note**

Renumbered from R17-4-303 (Supp. 92-4).

**R17-1-304. Renumbered****Historical Note**

Renumbered from R17-4-304 (Supp. 92-4).

**R17-1-305. Renumbered****Historical Note**

Renumbered from R17-4-305 (Supp. 92-4).

**R17-1-306. Expired****Historical Note**

Former Rule, General Order 14. Former Section R17-4-05 renumbered without change as Section R17-4-306 (Supp. 87-2). Renumbered from R17-4-306 (Supp. 92-4). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R.

1232, effective February 28, 2014 (Supp. 18-4).

**R17-1-307. Repealed****Historical Note**

Former Rule, General Order 5. Former Section R17-4-03 renumbered without change as Section R17-4-307 (Supp. 87-2). Renumbered from R17-4-307 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-308. Repealed****Historical Note**

Former Rule, General Order 20. Former Section R17-4-06 renumbered without change as Section R17-4-308 (Supp. 87-2). Renumbered from R17-4-308 (Supp. 92-4). Section repealed by final rulemaking at 14 A.A.R. 316, effective March 8, 2008 (Supp. 08-1).

**R17-1-309. Expired****Historical Note**

Former Rule, General Order 31. Former Section R17-4-11 renumbered without change as Section R17-4-309 (Supp. 87-2). Renumbered from R17-4-309 (Supp. 92-4). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 1232, effective February 28, 2014 (Supp. 18-4).

**R17-1-310. Repealed****Historical Note**

Former Rule, General Order 25. Former Section R17-4-09 renumbered without change as Section R17-4-310 (Supp. 87-2). Renumbered from R17-4-310 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-311. Repealed****Historical Note**

Former Rule, General Order 24. Former Section R17-4-08 renumbered without change as Section R17-4-311 (Supp. 87-2). Renumbered from R17-4-311 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-312. Repealed****Historical Note**

Former Rule, General Order 39. Former Section R17-4-13 renumbered without change as Section R17-4-312 (Supp. 87-2). Renumbered from R17-4-312 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-313. Repealed****Historical Note**

Former Rule, General Order 27. Former Section R17-4-10 renumbered without change as Section R17-4-313 (Supp. 87-2). Renumbered from R17-4-313 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-314. Repealed****Historical Note**

Former Rule, General Order 69. Former Section R17-4-27 renumbered without change as Section R17-4-314 (Supp. 87-2). Renumbered from R17-4-314 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563,

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effective January 15, 2002 (Supp. 02-1).

**R17-1-315. Repealed****Historical Note**

Former Rule, General Order 61. Former Section R17-4-23 renumbered without change as Section R17-4-315 (Supp. 87-2). Renumbered from R17-4-315 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-316. Expired****Historical Note**

Former Rule, General Order 57. Former Section R17-4-20 renumbered without change as Section R17-4-316 (Supp. 87-2). Renumbered from R17-4-316 (Supp. 92-4). Section expired under A.R.S. 41-1056(J) at 20 A.A.R. 1232, effective February 28, 2014 (Supp. 18-4).

**R17-1-317. Expired****Historical Note**

Former Rule, General Order 36. Former Section R17-4-12 renumbered without change as Section R17-4-317 (Supp. 87-2). Renumbered from R17-4-317 (Supp. 92-4). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 1232, effective February 28, 2014 (Supp. 18-4).

**R17-1-318. Repealed****Historical Note**

Former Rule, General Order 7. Former Section R17-4-04 renumbered without change as Section R17-4-318 (Supp. 87-2). Renumbered from R17-4-318 (Supp. 92-4). Section repealed by final rulemaking at 14 A.A.R. 316, effective March 8, 2008 (Supp. 08-1).

**R17-1-319. Repealed****Historical Note**

Former Rule, General Order 44. Former Section R17-4-14 renumbered without change as Section R17-4-319 (Supp. 87-2). Renumbered from R17-4-319 (Supp. 92-4). Section repealed by final rulemaking at 14 A.A.R. 316, effective March 8, 2008 (Supp. 08-1).

**R17-1-320. Repealed****Historical Note**

Former Rule, General Order 54 (Amended). Former Section R17-4-18 renumbered without change as Section R17-4-320 (Supp. 87-2). Renumbered from R17-4-320 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-321. Repealed****Historical Note**

Former Rule, General Order 21. Former Section R17-4-07 renumbered without change as Section R17-4-321 (Supp. 87-2). Renumbered from R17-4-321 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-322. Repealed****Historical Note**

Former Rule, General Order 3. Former Section R17-4-02 renumbered without change as Section R17-4-322 (Supp. 87-2). Renumbered from R17-4-322 (Supp. 92-4). Section repealed by final rulemaking at 14 A.A.R. 316, effective March 8, 2008 (Supp. 08-1).

effective March 8, 2008 (Supp. 08-1).

**R17-1-323. Repealed****Historical Note**

Former Rule, General Order 2A. Former Section R17-4-01 renumbered without change as Section R17-4-323 (Supp. 87-2). Renumbered from R17-4-323 (Supp. 92-4). Section repealed by final rulemaking at 14 A.A.R. 316, effective March 8, 2008 (Supp. 08-1).

**R17-1-324. Renumbered****Historical Note**

Renumbered from R17-4-324 (Supp. 92-4).

**R17-1-325. Renumbered****Historical Note**

Renumbered from R17-4-325 (Supp. 92-4).

**R17-1-326. Renumbered****Historical Note**

Renumbered from R17-4-326 (Supp. 92-4).

**R17-1-327. Renumbered****Historical Note**

Renumbered from R17-4-327 (Supp. 92-4).

**R17-1-328. Renumbered****Historical Note**

Renumbered from R17-4-328 (Supp. 92-4).

**R17-1-329. Renumbered****Historical Note**

Renumbered from R17-4-329 (Supp. 92-4).

**R17-1-330. Expired****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-67 renumbered without change as Section R17-4-330 (Supp. 87-2). Renumbered from R17-4-330 (Supp. 92-4). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 1232, effective February 28, 2014 (Supp. 18-4).

**R17-1-331. Repealed****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-68 renumbered without change as Section R17-4-331 (Supp. 87-2). Renumbered from R17-4-331 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-332. Repealed****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-69 renumbered without change as Section R17-4-332 (Supp. 87-2). Renumbered from R17-4-332 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-333. Repealed****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-71 renumbered without change as Section R17-4-333 (Supp. 87-2). Amended effective December 30, 1987 (Supp. 87-4). Renumbered from R17-4-333

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(Supp. 92-4). Section repealed by final rulemaking at 14 A.A.R. 316, effective March 8, 2008 (Supp. 08-1).

**R17-1-334. Repealed****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-70 renumbered without change as Section R17-4-334 (Supp. 87-2). Renumbered from R17-4-334 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-335. Repealed****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-401 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-401 renumbered without change as Section R17-4-335 (Supp. 87-2). Renumbered from R17-4-335 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-336. Repealed****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-402 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-402 renumbered without change as Section R17-4-336 (Supp. 87-2). Renumbered from R17-4-336 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-337. Repealed****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-403 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-403 renumbered without change as Section R17-4-337 (Supp. 87-2). Renumbered from R17-4-337 (Supp. 92-4). Section repealed by final rulemaking at 8 A.A.R. 563, effective January 15, 2002 (Supp. 02-1).

**R17-1-338. Renumbered****Historical Note**

Renumbered from R17-4-338 (Supp. 92-4).

**R17-1-339. Renumbered****Historical Note**

Renumbered from R17-4-339 (Supp. 92-4).

**R17-1-340. Renumbered****Historical Note**

Renumbered from R17-4-340 (Supp. 92-4).

**R17-1-341. Renumbered****Historical Note**

Renumbered from R17-4-341 (Supp. 92-4).

**R17-1-342. Renumbered****Historical Note**

Renumbered from R17-4-342 (Supp. 92-4).

**R17-1-343. Renumbered****Historical Note**

Renumbered from R17-4-343 (Supp. 92-4).

**R17-1-344. Renumbered****Historical Note**

Renumbered from R17-4-344 (Supp. 92-4).

**R17-1-345. Renumbered****Historical Note**

Renumbered from R17-4-345 (Supp. 92-4).

**R17-1-346. Procedure to estimate use fuel consumption****Definitions:**

1. "Assistant Director" means the Assistant Director of the Department of Transportation for the Motor Vehicle Division.
2. "County highway mile" means one mile of highway maintained by a county for which the county does not receive full reimbursement for such maintenance from any other entity.
3. "Population" means the population as determined pursuant to the provisions of A.R.S. § 28-1598.

**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Renumbered from R17-4-346 (Supp. 92-4).

**R17-1-347. Procedure to estimate percentage of consumption of use fuel in each county**

- A. The Motor Vehicle Division shall calculate the estimated percentage of use fuel consumed in a particular county for a particular month as compared to the total amount of use fuel consumed in the entire state during the same month in accordance with the following formula:

$$X = \frac{.7A + .3B + C}{2}$$

1. "X" is the percentage for a particular county of the total amount of use fuel consumed in the entire state for a month.
  2. "A" is the number of county highway miles in the county divided by the total number of county highway miles in all counties within the state.
  3. "B" is the total unincorporated county population in the county divided by the total unincorporated county population in all counties within the state.
  4. "C" is the percent of use fuel consumed in the county that was used to distribute highway user revenue funds in June 1985.
- B. If the formula described in subsection (A) results in a particular county having less than 1% of the use fuel consumed in the state, that county's share shall be raised to 1% and the resulting deficiency shall be prorated among the remaining counties in the same percentage as the amount of use fuel consumed.

**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Renumbered from R17-4-347 (Supp. 92-4).

**R17-1-348. Requirements to provide data pertaining to**

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**county highway miles**

- A. Each year prior to April 1, the county engineer for each county in the state shall certify under oath and deliver to the Motor Vehicle Division a report containing the number of county highway miles located in his county as of the preceding December 31. The report shall contain the designation of each highway included in the number of county highway miles, the location of its termini, and the length of the highway measured on its centerline to the nearest one tenth of a mile.
- B. The Assistant Director shall give notice in writing to any county engineer who fails to deliver the report by March 31. The notice shall state that the report has not been received and demand that it be delivered to the Motor Vehicle Division within ten days of the mailing of the notice.
- C. If a county engineer fails to deliver the report required by subsection (A) after being given the ten-day notice provided in subsection (B), the Assistant Director shall continue to perform the calculations required by A.R.S. § 28-1598 using the county road miles reported by the delinquent county for the prior year. However, commencing with distributions made in the month following the expiration of the ten-day notice, the funds due the delinquent county pursuant to the provisions of A.R.S. § 28-1598 shall not be distributed to the delinquent county until the County Engineer has provided the report to the Motor Vehicle Division required by subsection (A).
- D. The report required by subsection (A) shall be available for inspection by all of the counties. A county may challenge the report made by any other county by filing a challenge in writing with the Assistant Director not later than April 30 of each year. In the case of reports received after April 1 of each year, the challenge must be received by the Assistant Director not later than 30 days after receipt of the report by the Assistant Director. The challenge shall specify the highways and the number of disputed miles being contested.
- E. If the Assistant Director receives a challenge to a report, the Assistant Director of the Department of Transportation for Transportation Planning Division shall hold a hearing within 60 days upon receipt to resolve the challenge. The burden of proof at the hearing shall be on the county bringing the challenge. The decision of the Assistant Director of the Department of Transportation for Transportation Planning Division concerning the outcome of the challenge shall be final.

**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Renumbered from R17-4-348 (Supp. 92-4).

**R17-1-349. Period of applicability**

The estimated percentage of use fuel consumed in each county that is calculated annually pursuant to the provisions of this Article shall be used to calculate the distribution pursuant to A.R.S. § 28-1598 commencing with distributions made after June 30 of that year and shall continue to be used until the next succeeding June 30 or until a new estimated percentage of use fuel consumed in each county is calculated in accordance with the provisions of this Article, whichever is later.

**Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Renumbered from R17-4-349 (Supp. 92-4).

**ARTICLE 4. REPEALED****R17-1-401. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7,

2009 (Supp. 09-1).

**R17-1-402. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1).

**R17-1-403. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1).

**R17-1-404. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1).

**R17-1-405. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1).

**R17-1-406. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1).

**R17-1-407. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3236, effective July 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 15 A.A.R. 182, effective March 7, 2009 (Supp. 09-1).

**ARTICLE 5. ADMINISTRATIVE HEARINGS****R17-1-501. Definitions**

The following definitions apply to this Article unless otherwise required:

1. "Administrative hearing" means a scheduled Executive Hearing Office proceeding for deciding a dispute based on the evidence presented to an administrative law judge. An administrative hearing includes:
  - a. Advance notice to participants of record,
  - b. An opportunity for witnesses to testify under oath, and
  - c. Presentation of documentary evidence.
2. "Administrative law judge" means a person who conducts a summary review or presides at an administrative hearing, with the powers listed under these rules.
3. "Affidavit" means a declaration or statement of facts made:
  - a. In writing, and
  - b. Under oath or affirmation.
4. "Agency action" means an action affecting a license, permit, certificate, approval, registration, or other permission

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issued by the Arizona Department of Transportation or the Division.

5. "Attorney" means:
  - a. An individual who is an active member in good standing with the State Bar of Arizona,
  - b. An individual approved to appear pro hac vice before the Executive Hearing Office pursuant to Rule 38(A) of the Arizona Supreme Court, or
  - c. An individual authorized by Rule 31 of the Arizona Supreme Court to appear on behalf of another person or legal entity at a hearing before the Executive Hearing Office.
6. "Business day" means a day other than a Saturday, Sunday, or state holiday.
7. "Deposition" means a witness' testimony:
  - a. Given under oath or affirmation,
  - b. Brought out by another person's oral or written questions, and
  - c. Reduced to writing for a proceeding.
8. "Director" means the Arizona Department of Transportation, Motor Vehicle Division Director.
9. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
10. "Executive Hearing Office" means the branch of the Director's office that conducts an administrative hearing or a summary review.
11. "In writing" means:
  - a. An original document,
  - b. A photocopy,
  - c. A facsimile, or
  - d. An electronic mail message.
12. "Motion" means a written or oral proposal for consideration and action filed by a person with the Executive Hearing Office.
13. "Participant of record" means:
  - a. A petitioner or a respondent;
  - b. An attorney representing a petitioner or respondent; or
  - c. A person or entity with an interest in the subject matter of an administrative hearing as determined from Division records or from Arizona Department of Transportation records.
14. "Petitioner" means a person or entity that requests an administrative hearing or a summary review from the Executive Hearing Office.
15. "Respondent" means a person against whom relief is sought in an Executive Hearing Office proceeding.
16. "Summary review" means an Executive Hearing Office proceeding conducted under A.R.S. § 28-1385(L).
17. "Under oath or affirmation" means a witness' sworn statement made to a person with the power to administer an oath or affirmation.

**Historical Note**

New Section recodified from R17-4-901 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-502. Request for Hearing**

- A. A petitioner or petitioner's attorney shall file a request for a hearing:
  1. By mail or hand delivery to the Executive Hearing Office's street address:

Executive Hearing Office, Arizona Department of Transportation, Motor Vehicle Division, 3737 N. 7th St., Suite 160, Phoenix, AZ 85014-5017;

2. By fax to (602) 241-1624; or
  3. By e-mail to the Executive Hearing Office's electronic mail address: hearingoffice@azdot.gov; and
  4. Timeliness of filing is determined as of the date the Executive Hearing Office receives a request for hearing.
- B. A request for hearing shall be submitted to the Executive Hearing Office within 15 days of the date of an agency action notice.
  - C. A request for a hearing shall include the petitioner's name, mailing address, and telephone number.

**Historical Note**

New Section recodified from R17-4-902 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-503. Notice of Hearing**

- A. If a petitioner timely files a request for a hearing as provided under R17-1-502, the Executive Hearing Office shall send a notice of hearing to the petitioner's mailing address in the request for hearing and to any other participant of record.
- B. The notice of hearing shall state the:
  1. Time, date, and place of the administrative hearing;
  2. Type of administrative hearing; and
  3. Statutory authority for the administrative hearing.

**Historical Note**

New Section recodified from R17-4-903 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-504. Representation**

- A. Prior to any appearance, a petitioner's or respondent's attorney licensed in a state other than Arizona, shall file with, and obtain approval from, the Executive Hearing Office the following documentation:
  1. An original motion to appear pro hac vice,
  2. The Notice of Receipt of Complete Application from the State Bar of Arizona, and
  3. The original certificate of good standing from the licensing State Bar.
- B. Documentation under subsection (A) shall be filed with the Executive Hearing Office at least five business days before date of appearance.
- C. Non-compliance with this Section shall result in the exclusion of a petitioner's or respondent's attorney licensed in a state other than Arizona from participation in an administrative hearing.

**Historical Note**

New Section recodified from R17-4-904 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Former R17-1-504 renumbered to R17-1-505; new R17-1-504 made by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-505. Administrative Hearing Procedure**

- A. An administrative law judge shall preside at an administrative hearing and shall:
  1. Administer oaths or affirmations;
  2. Conduct fair and impartial hearings;

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3. Have the parties state orally at the hearing their positions on the issues;
  4. Rule on motions filed under R17-1-508;
  5. Maintain an administrative hearing record;
  6. Issue a written decision, including findings of fact and conclusions of law, based on the record, and
  7. Sustain an agency action supported by the record, state and administrative law.
- B.** In addition to the requirements of subsection (A), an administrative law judge may:
1. Issue a subpoena for the attendance of a relevant witness or for the production of relevant documents or things, and
  2. Question a witness.
- C.** An administrative law judge may order summary suspension of a license according to A.R.S. § 41-1064(C).
- D.** A.R.S. § 41-1063 applies to the contents and service of an administrative hearing decision.
- E.** A participant of record shall not communicate, either directly or indirectly, with the administrative law judge about any substantive issue in a pending matter unless:
1. All participants of record are present;
  2. Communication is during a scheduled proceeding, where an absent participant of record fails to appear after proper notice; or
  3. Communication is by written motion with copies to all participants of record.
- F.** At the request of a participant of record or at the judge's discretion, an administrative law judge may order a witness excluded from the hearing room except:
1. A participant of record, or
  2. A person whose presence is shown to be essential to the presentation of a participant of record's case.

**Historical Note**

New Section recodified from R17-4-905 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Former R17-1-505 renumbered to R17-1-506; new R17-1-505 renumbered from R17-1-504 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-506. Administrative Hearing Evidence**

- A.** A.R.S. §§ 41-1062(A) applies to evidence offered in an administrative hearing.
- B.** The administrative law judge may admit a witness' deposition or affidavit and determine its evidentiary weight. The party taking a witness' deposition or affidavit shall bear all deposition-related or affidavit-related costs.

**Historical Note**

New Section recodified from R17-4-906 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Former R17-1-506 renumbered to R17-1-507; new R17-1-506 renumbered from R17-1-505 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-507. Time Computation**

In computing a time period under this Article, the Executive Hearing Office shall:

1. Exclude the day of the act triggering the period;
2. If the last day is a Saturday, Sunday, or legal holiday, extend the period to the end of the next business day;
3. If the period is 10 days or less, count only the business days; and
4. If service is by mail, extend the period by five days.

**Historical Note**

New Section recodified from R17-4-907 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Former R17-1-507 renumbered to R17-1-508; new R17-1-507 renumbered from R17-1-506 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-508. Motion Practice**

- A.** A party or a party's attorney making a motion shall state in the motion the relief sought, the factual basis, and the legal authority for the requested relief.
1. For a pre-hearing motion, a party or a party's attorney shall:
    - a. Make the motion in writing, and
    - b. File the motion with the Executive Hearing Office at least five business days before the administrative hearing.
  2. For a motion made at an administrative hearing:
    - a. A party or a party's attorney may make the motion orally, and
    - b. The administrative law judge may require the party or the party's attorney to file the motion in writing.
- B.** An administrative law judge may include a ruling on a motion in an administrative hearing decision.

**Historical Note**

New Section recodified from R17-4-908 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Former R17-1-508 renumbered to R17-1-509; new R17-1-508 renumbered from R17-1-507 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-509. Subpoena Issuance**

- A.** In connection with an administrative hearing, an administrative law judge may issue a subpoena to compel the attendance of a witness or the production of documents or things.
1. A party or a party's attorney requesting a subpoena shall file a written subpoena request, briefly stating the substance of the evidence sought and why the evidence is necessary for the hearing.
  2. An administrative law judge has discretion to issue or deny a subpoena based on the:
    - a. Relevance of the evidence sought,
    - b. Reasonable need for the evidence sought, and
    - c. Timeliness of the request.
- B.** A party or a party's attorney requesting a subpoena shall:
1. Draft the subpoena in the correct format, including:
    - a. The caption and docket number of the matter;
    - b. A list of documents or things to be produced;
    - c. The full name and address of:
      - i. The custodian of the documents or things listed, or
      - ii. The person ordered to appear;
    - d. The time, date, and place to appear or to produce documents or things; and
    - e. The name, address, and telephone number of the party or the party's attorney requesting the subpoena;
  2. Obtain an administrative law judge's signature on the subpoena,
  3. Ensure service of the subpoena on the person named in the subpoena under subsection (C), and
  4. Bear all subpoena-related costs.

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- C. Unless otherwise provided by statute or administrative rule, a party or a party's attorney requesting a subpoena shall have the subpoena served by a person who:
1. Is at least age 18 and is not a party to the administrative hearing;
  2. Delivers, within Arizona, a copy of the subpoena to the person named in the subpoena;
  3. If the subpoena requires the named person's attendance at an administrative hearing, hands the named person the amount prescribed in A.R.S. § 12-303 as the witness fee for one day's attendance and allowed mileage; and
  4. Files with the Executive Hearing Office a proof of service, signed by the person who served the subpoena, certifying:
    - a. The date of service,
    - b. The manner of service, and
    - c. The name of the person served.
- D. A party or a person served with a subpoena who objects to the subpoena or a portion of the subpoena, may file an objection in writing with the Executive Hearing Office. The party or person served with the subpoena shall:
1. State in the objection the reasons for objecting; and
  2. File the objection:
    - a. Within five days after service of the subpoena; or
    - b. If the subpoena is served less than five days before an administrative hearing, at the start of the hearing.
- E. An administrative law judge may quash or modify a subpoena if:
1. The subpoena is unreasonable or imposes an undue burden, or
  2. The evidence sought may be obtained by another method.
- F. Unless otherwise provided by statute or administrative rule, a party or a party's attorney requesting a subpoena or the Arizona Department of Transportation shall enforce the subpoena in the Superior Court of Arizona, in the county where the administrative hearing is held.

**Historical Note**

New Section recodified from R17-4-909 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Former R17-1-509 renumbered to R17-1-510; new R17-1-509 renumbered from R17-1-508 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-510. Document Filing**

- A. A document filed in an Executive Hearing Office proceeding shall state:
1. The description and title of the proceeding,
  2. The name of the party filing the document,
  3. The date the document is signed,
  4. The title and address of the document's signer, and
  5. If applicable, the attorney's name, state bar number, law firm, address, and telephone number.
- B. A party or a party's attorney shall sign a document filed with the Executive Hearing Office. By signing, the signer certifies that:
1. The signer read the document;
  2. The document is supported by the facts and the law or by a good faith argument to extend, modify, or reverse the law; and
  3. The document is not filed to harass, delay, or needlessly increase the cost of the Executive Hearing Office proceeding.
- C. A document is filed as of the date the Executive Hearing Office receives the document.

**Historical Note**

New Section recodified from R17-4-913 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Former R17-1-510 renumbered to R17-1-511; new R17-1-510 renumbered from R17-1-509 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-511. Continuing an Administrative Hearing**

- A. An administrative hearing participant of record requesting a continuance shall file the request with the Executive Hearing Office at least seven business days before the hearing. The continuance request shall state a reason for continuing the administrative hearing.
- B. An administrative law judge shall not grant a continuance unless the participant of record establishes good cause for the continuance.
- C. An administrative law judge shall not grant a request for continuance which is untimely unless the participant of record establishes good cause for the delay in filing the request.

**Historical Note**

New Section recodified from R17-4-911 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Former R17-1-511 renumbered to R17-1-512; new R17-1-511 renumbered from R17-1-510 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-512. Rehearing and Judicial Review**

- A. A party may file a written motion for rehearing with the executive hearing office, stating in detail the reasons a rehearing should be granted.
- B. Unless otherwise provided by statute, a motion for rehearing is timely if received by the Executive Hearing Office within the later of:
1. Fifteen days after the date of in-person service of the administrative hearing decision, or
  2. Fifteen days after the mailing date of the administrative hearing decision.
- C. A timely motion for rehearing stays an agency action, other than:
1. A summary suspension under A.R.S. § 41-1064(C), or
  2. An agency action sustained under subsection (J).
- D. An administrative law judge may grant a rehearing for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Arizona Department of Transportation or the Division, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
  2. Misconduct of the Arizona Department of Transportation or the Division, its staff, an administrative law judge, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  5. Excessive penalty;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
  7. That the administrative hearing decision is a result of passion or prejudice; or
  8. That the findings of fact or decision is not justified by the evidence or is contrary to law.

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- E. An administrative law judge may affirm or modify an administrative hearing decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying an administrative hearing decision or granting a rehearing shall specify the grounds for the order.
- F. An administrative law judge may order a rehearing for a reason in subsection (D).
- G. An administrative law judge may require the filing of written briefs on the issues raised in a motion for rehearing.
- H. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. An administrative law judge may extend this period for a maximum of 20 days for good cause as described in subsection (I) or by written stipulation of the parties. Reply affidavits may be permitted at the discretion of the administrative law judge.
- I. An administrative law judge may extend the time limits in subsections (A) and (H) upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have known in time, using reasonable diligence, and a ruling on the motion will:
1. Further administrative convenience, expedition, or economy; or
  2. Avoid undue prejudice to any party.
- J. An administrative law judge shall issue an administrative hearing decision as a final decision without an opportunity for a rehearing if the administrative law judge makes specific findings that:
1. The public health, safety, and welfare require immediate effectiveness of the administrative hearing decision; and
  2. A rehearing of the decision is impractical, unnecessary, or contrary to the public interest.
- K. A party may appeal or request judicial review of a final administrative hearing decision in the Superior Court of Arizona as provided by statute.

**Historical Note**

New Section recodified from R17-4-912 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Former R17-1-512 renumbered to R17-1-513; new R17-1-512 renumbered from R17-1-511 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-513. Summary Review of an Administrative Suspension Order Under A.R.S. § 28-1385**

- A. A petitioner issued a driving privilege suspension order under A.R.S. § 28-1385, may request summary review instead of a hearing.
1. The requirements of R17-1-502 apply to a summary review request.
  2. The petitioner or the petitioner's attorney may include with the summary review request a written statement of:
    - a. The reasons why the Division should not suspend the petitioner's driving privilege, and
    - b. Reasons to find that at least one issue in subsections (C)(1) through (C)(3) is not met by the affidavit filed by a law enforcement officer with the Department.
- B. An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall:
1. Conduct the summary review without the petitioner's presence,
  2. Examine the documents in the Executive Hearing Office case file, and

3. Issue a written summary review decision sustaining or voiding the suspension order.

- C. An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall consider the following factors:

1. Whether the law enforcement officer's certified report reflects the officer had reasonable grounds to believe the petitioner was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor;
2. Whether the law enforcement officer's certified report reflects the officer placed the petitioner under arrest for a violation of A.R.S. §§ 4-244(33), 28-1381, 28-1382, or 28-1383, and the petitioner complied with A.R.S. § 28-1321;
3. Whether the law enforcement officer's certified report reflects petitioner's test results indicating at least the applicable alcohol concentration stated in A.R.S. § 28-1385; and
4. Whether the petitioner's written statement of the reasons why the Division should not suspend the petitioner's driving privilege provides convincing evidence that at least one issue in subsections (C)(1) through (C)(3) was not met.

**Historical Note**

New Section recodified from R17-4-910 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4133, effective September 13, 2001 (Supp. 01-3). Former R17-1-513 renumbered to R17-1-514; new R17-1-513 renumbered from R17-1-512 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**R17-1-514. Maintaining Administrative Hearing Decorum**

- A. All hearings are open to the public, however a person shall not interfere with access to or from a hearing room, or interfere, or threaten interference with a hearing.
- B. If a person interferes, threatens interference, or disrupts a hearing, the administrative law judge may order the disruptive person to leave or be removed.

**Historical Note**

Section R17-1-514 renumbered from R17-1-513 and amended by final rulemaking at 13 A.A.R. 4598, effective February 3, 2008 (Supp. 07-4).

**ARTICLE 6. SOLICITATION****R17-1-601. Definitions**

The following terms and phrases apply to this Article, unless otherwise specified:

"Animal guide or service animal" means an animal that:

Completes a formal training program,

Assists its owner in one or more daily living tasks associated with a productive lifestyle, and

Is trained to not pose a danger to the health and safety of the general public.

"Application" means a solicitation request form that is completed and submitted to the Department by a person seeking to conduct a solicitation on Department property.

"Department" means the Arizona Department of Transportation.

"Department property" means real property and buildings under the jurisdiction of the Director, excluding a highway, highway right-of-way, excess right-of-way, property leased by

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the Department to a third party, and any sidewalk or paved area along the street frontage of the property that is not physically distinguishable from an adjacent municipal or other public sidewalk.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designee.

“Excess right-of-way” means real property under the jurisdiction of the Director that is:

Determined by the Director to be no longer needed or used for transportation purposes, and

Held by the Department for disposition under the provisions of A.R.S. § 28-7095.

“Permit” means an original application form signed by the Director as authorization for a solicitor to conduct a specified solicitation.

“Person” has the meaning prescribed under A.R.S. § 1-215.

“Solicitation” means any activity, except an activity prohibited under R17-1-607(B)(3) or (4), that can be reasonably interpreted as being for the distribution of information or the promotion of causes or memberships.

“Solicitation area” means a location outside a building on Department property, which may be designated by an office supervisor or the office supervisor’s designee for solicitation activities without interfering with business operations, blocking entry or exit doors, or inhibiting pathways necessary for building access or egress.

“Solicitation material” means advertising circulars, flyers, handbills, leaflets, petitions, or other printed information.

“Solicitor” means a person conducting a solicitation or the person’s agent.

“Work site” means a location within a building on Department property where public employees or officers conduct the daily business of the Department. An office supervisor may designate a cafeteria or break room as a work site if appropriate.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1995, effective September 13, 2011 (Supp. 11-3).

**R17-1-602. Applicability; Exemptions**

- A. This Article does not apply to any state-authorized or state-sponsored employee programs expressly exempted by the Arizona Department of Administration under A.A.C. R2-11-309(A).
- B. Employee associations composed principally of employees of state government agencies may apply under this Article for a permit to conduct a solicitation or collect membership fees at a Department work site. Employee associations composed principally of employees of state government agencies are exempt from the requirements of R17-1-607 and R17-1-608, as applicable.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1995, effective September 13, 2011 (Supp. 11-3).

**R17-1-603. Application for Permit**

- A. A person seeking to conduct a solicitation on Department property shall first apply to the Department for a permit by completing a solicitation request form provided by the Department.

- B. The person shall submit the completed solicitation request form by mail, fax, or e-mail as provided on the form at least 15 days before the desired effective date of the solicitation.

- C. A completed application is one that is legible and contains, at a minimum, all of the following information:

1. The name, address, and telephone number of the applicant. If a permit is requested on behalf of an organization, the application shall also include the name, address, and telephone number of the organization, as well as its primary representative or contact person deemed in charge of and responsible for the proposed solicitation;
2. The proposed effective date and approximate starting and concluding times of the proposed solicitation;
3. The names of all persons who will take part in conducting solicitation activities on behalf of the applicant;
4. The specific office location requested for the proposed solicitation;
5. The general purpose of the proposed solicitation;
6. Copies of all solicitation materials to be used so the Department can verify that the purpose of the solicitation does not violate R17-1-607(B)(3) or (4);
7. Certification by the applicant that the applicant, and any person acting on behalf of the applicant, has not been convicted of a felony or misdemeanor offense involving dishonesty, fraud, theft, assault, battery, or other crime involving physical violence within five years of the date of the application; and
8. The signature of the applicant acknowledging that he or she agrees to:
  - a. Comply with all requirements under this Article; and
  - b. Indemnify and reimburse the Department for claims and expenses arising out of the solicitor’s use of Department property, including any cleanup or damage repair costs associated with the solicitation incurred by the Department.

- D. The Department, to the extent necessary and as appropriate to the time, place, and manner of each proposed solicitation and the safety issues it may pose, may require an applicant to provide at the applicant’s own expense:

1. Adequate liability insurance coverage in the form of a certificate of insurance listing the state of Arizona and the Arizona Department of Transportation as additional insured entities, and
2. Adequate security services during solicitation activities.

- E. The Department shall consider the following criteria in determining whether one or more of the actions in subsection (D) is necessary and in the best interest of the state. The listed factors also apply in determining the amount of liability insurance coverage an applicant shall provide:

1. Previous experience with similar solicitation activities,
2. Data regarding the risk of the proposed solicitation activities,
3. Security services required for similar solicitation activities in Arizona and the cost of those services, and
4. The applicant’s ability to pay an insurance premium or security service provider.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1995, effective September 13, 2011 (Supp. 11-3).

**R17-1-604. Application Processing; Time-frames**

- A. The Department shall provide notice to the applicant that the application is either complete or incomplete within five business days of receiving the application:

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1. If the application is complete, the notice to the applicant shall indicate the date the Department stamped the complete application as received; or
  2. If the application is incomplete, the notice to the applicant shall indicate the current date and include an itemized list of all missing information the Department requires of the applicant before the application can be processed.
- B.** An applicant with an incomplete application shall respond to the notice provided by the Department under subsection (A)(2) within 10 days after the date indicated on the notice.
1. The Department may deny the permit if the applicant fails to provide all required information within 10 days after the date of the notice.
  2. On receipt of all required information, the Department shall provide to the applicant the notice prescribed under subsection (A)(1).
- C.** The Director shall render a permit decision within 10 business days after the date an application is determined to be complete. The date of receipt is the date on the notice provided by the Department to the applicant under subsection (A)(1) acknowledging receipt of the complete application.
- D.** For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
1. Administrative completeness review time-frame: Five business days.
  2. Substantive review time-frame: 10 business days.
  3. Overall time-frame: 15 business days.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1995, effective September 13, 2011 (Supp. 11-3).

**R17-1-605. Permit Limitations**

- A.** The Director may accept an application and issue a solicitation permit under this Article on a first-come, first-served basis no earlier than 60 days before the proposed solicitation.
- B.** A permit holder may conduct a solicitation only as authorized by the Director under this Article, and only:
1. At the approved location designated on the permit,
  2. Between the hours of 9:00 a.m. and 4:00 p.m., and
  3. On a day the approved location is open for regular business.
- C.** A maximum of three solicitations may be conducted at any one approved location on a particular day.
- D.** A maximum of two solicitor representatives named on the permit may conduct solicitation activities on behalf of the permit holder at any one approved location, unless extenuating circumstances exist and advance written permission to exceed this limitation is granted by the Director on receipt of a written request by the solicitor.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1995, effective September 13, 2011 (Supp. 11-3).

**R17-1-606. Permit Issuance; Denial; Appeal; Hearing**

- A.** If the Director approves an application for a solicitation permit, the permit:
1. Shall expire after the approved solicitation time period specified on the permit, unless previously revoked;
  2. Shall not be valid for more than 90 days from the effective date approved by the Director;
  3. Shall not be transferred or assigned, in whole or in part, to any person other than the person or organization to whom the permit is issued; and
  4. May be renewed only upon submission of a new application.

- B.** The Director shall deny an application for a permit for one or more of the following reasons:
1. The solicitation is likely to:
    - a. Interfere with the work of an employee or daily business of the Department;
    - b. Create an unreasonable risk of injury to a person or risk of damage to property; or
    - c. Conflict with the time, place, manner, or duration of another solicitation for which a permit is already issued or pending;
  2. The applicant or the solicitation activity fails to comply with the requirements of this Article or any other applicable rule or statute;
  3. The applicant, or the person or organization on whose behalf the application was made, has:
    - a. Within 12 months of the date of application, had a previous solicitation permit revoked by the Department for non-compliance with a provision of this Article or any other applicable rule or statute; or
    - b. Within five years of the date of application, on three separate occasions, had a previous solicitation permit revoked by the Department for non-compliance with a provision of this Article or any other applicable rule or statute.
- C.** If the Director denies an application for a solicitation permit, the Department shall send written notification of the Director's decision to the mailing address listed on the applicant's permit application, within three business days of denying the permit. The written notification shall state:
1. The Department's reason for the denial, citing all applicable supporting statutes or rules;
  2. The applicant's right to request a hearing to appeal the Department's action under A.R.S. Title 41, Chapter 6, Article 6, and Article 5 of this Chapter; and
  3. The time-frame for requesting a hearing with the Department's Executive Hearing Office as prescribed under Article 5 of this Chapter.
- D.** The scope of the hearing shall be limited to a determination of whether the Department possessed grounds to deny the solicitor's permit under subsection (B).

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1995, effective September 13, 2011 (Supp. 11-3).

**R17-1-607. Solicitor Responsibilities; Prohibited Activities**

- A.** After receiving express written permission from the Director for a solicitation on Department property, an approved solicitor shall:
1. Provide a table to be used for all authorized solicitation activity;
  2. Present the original solicitation permit without any modifications or alterations, to an office supervisor at the approved location for inspection and sign-in prior to setting up a table or distributing materials;
  3. Provide at least one form of photo identification to an office supervisor for each person participating in or conducting solicitation activities on behalf of the permit holder;
  4. Maintain a copy of the approved solicitation permit at each authorized location at all times;
  5. Set up a table only in the solicitation area;
  6. Remain at the table in the solicitation area while performing any solicitation activity;
  7. Ensure that no entry or exit doors are blocked at any time;
  8. Ensure that no solicitation activity interferes with building access or egress;

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9. Ensure that no solicitation activity interferes with Department operations; and
  10. Ensure that all solicitors employed by, or acting on behalf of, the permit holder display a name badge that is at least three inches in height and four inches in width. The name badge shall contain:
    - a. The name of the organization conducting the solicitation, if applicable;
    - b. The organization's address;
    - c. The name of the individual solicitor in bold letters; and
    - d. The words "Authorized Representative."
- B.** A solicitor shall not:
1. Conduct any type of solicitation on Department property without the express written permission of the Director as provided under this Article;
  2. Perform any activity not specifically authorized by the permit;
  3. Collect monetary contributions of any kind, including credit or debit card numbers, whether for charitable purposes or not;
  4. Offer goods or services for sale, or engage in any other activity involving the exchange of money for a product or service, including collecting credit or debit card numbers;
  5. Engage in any solicitation activity outside of the solicitation area;
  6. Engage in behavior that interferes with the business activities of the Department and its customers, including but not limited to:
    - a. Following or continuing to solicit a person after that person has given a negative response to the solicitation;
    - b. Intimidating, verbally harassing, or shouting at a customer or employee of the Department; or
    - c. Preventing or interrupting the flow of customer traffic to or from a building located on Department property.
  7. Use any audio amplification device to attract the public, unless the device is assistive technology relating to a disability;
  8. Use any Department materials, supplies, equipment, or other resources to conduct a solicitation;
  9. Bring an animal, other than an animal guide or service animal, into the solicitation area;
  10. Leave garbage, litter, trash, human or animal waste, or any other kind of waste on Department property unless the waste is deposited in a container the Department maintains for that kind of waste; or
  11. Conduct a solicitation on Department property in violation of a permit limitation provided under R17-1-605.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1995, effective September 13, 2011 (Supp. 11-3).

**R17-1-608. Signage Requirements**

- A.** A solicitor approved for conducting a solicitation at any Department location shall provide, and prominently display beside each solicitation table, a sign that is clearly visible to the public.
1. The sign shall:
    - a. Be at least 22" wide and 28" high;
    - b. Be printed in black ink on plain white poster board; and
    - c. Include the following language using a minimum of one inch letters in Times New Roman font: "(Name of company or organization represented) is a private

organization. Its representatives are not affiliated with, nor are they employees of, the state of Arizona or the Arizona Department of Transportation. By approval of this solicitation, the state of Arizona does not endorse any product or petition promoted by solicitors/representatives."

2. The sign for a solicitor providing voter registration services shall include the following additional language using a minimum of one inch letters in Times New Roman font: "ADOT provides voter registration services inside all Motor Vehicle Division Customer Service offices and on the internet at www.ServiceArizona.com."
- B.** The sign required by the Department under subsection (A) shall contain no additions or modifications.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1995, effective September 13, 2011 (Supp. 11-3).

**R17-1-609. Removal; Revocation; Appeal; Hearing**

- A.** The Department may immediately remove, or cause to be removed, items of a solicitation that may damage state property, inhibit building access or egress, or pose safety issues. The Department also may remove, or cause to be removed, any and all solicitors who are found to be damaging state property, inhibiting building access or egress, or posing safety issues.
- B.** The Director may revoke a permit and ask a solicitor to leave the premises if the Director determines that:
1. The solicitor's permit application contained a false or misleading statement or a material omission, or
  2. The solicitor or solicitation failed to comply with a provision of this Article or any other applicable rule or statute.
- C.** If the Director revokes a solicitation permit, the Department shall send written notification of the Director's decision to the mailing address listed on the solicitor's permit application, within three business days of revoking the permit. The written notification shall state:
1. The Department's reason for the revocation, citing all applicable supporting statutes or rules;
  2. The applicant's right to request a hearing to appeal the Department's action under A.R.S. Title 41, Chapter 6, Article 6, and Article 5 of this Chapter; and
  3. The time-frame for requesting a hearing with the Department's Executive Hearing Office as prescribed under Article 5 of this Chapter.
- D.** The scope of a hearing shall be limited to a determination of whether the Department possessed grounds to revoke the solicitor's permit under subsection (B).

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1995, effective September 13, 2011 (Supp. 11-3).

**ARTICLE 7. ADVERTISING AND SPONSORSHIP PROGRAM****R17-1-701. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-601, 28-7316, and 28-7901, the following terms apply to this Article:

"Acknowledgment plaque" means a sign panel intended only to inform the traveling public that a highway-related service, product, or monetary contribution was provided by the sponsor portrayed on the sign panel.

"Acknowledgment sign" means a sign intended only to inform the traveling public that a highway-related service, product, or monetary contribution was provided by the sponsor portrayed on the sign. Acknowledgment signs are a way of recognizing a

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company, business, or volunteer group that provides a highway-related service.

“Advertise” means to display or promote commercial brands, products, or services on authorized non-highway assets and facilities of the Department. Advertising may contain descriptive words or phrases providing information relating to promotional offers, location directions, amenity listings, telephone numbers, internet addresses (including domain names), slogans, or any other message essential in identifying the advertiser or sponsor, and informing the public of where the promoted products or services can be obtained.

“Advertiser” means a person, firm, or entity authorized to enter into a lease agreement with the Department or its contractor for providing a motor vehicle-, motorist-, or highway-related service or product to the Department, or a monetary contribution to the state highway fund as provided under A.R.S. § 28-7316, in exchange for the ability to advertise on non-highway assets or facilities authorized by the Department.

“Advertising agreement” means a written lease agreement between an advertiser and the Department or its contractor allowing the advertiser to advertise on authorized non-highway assets and facilities of the Department.

“Contract” means a written agreement between a contractor and the Department, which describes the obligations and rights of both parties relative to the administration, operation, and maintenance of the advertising and sponsorship program, or an element thereof, when conducted on behalf of the Department.

“Contractor” means a person, firm, or entity that enters into a contract with the Department to administer, operate, and maintain on behalf of the Department the advertising and sponsorship program, or an element thereof, and that is responsible for conducting all aspects of the advertising and sponsorship program as outlined in the contract and this Article.

“Clear zone” means the unobstructed relatively flat area beyond the edge of a roadway that allows a driver to stop safely or regain control of a vehicle that leaves the main traveled way.

“Department” means the Arizona Department of Transportation as the owner of the highway on which signs are placed and the organization that directly receives the highway-related service, product, or monetary contribution from a sponsor, and to which the sponsorship policy and agreement applies.

“Driver distraction” means a driver’s inattention to the driving task at hand, resulting from internal or external events or actions.

“FHWA” means the Federal Highway Administration of the U.S. Department of Transportation.

“Highway” has the same meaning as prescribed in A.R.S. § 28-101, under “street or highway.”

“Highway-related service” means any activity customarily administered or delivered by the Department in the process of designing, building, operating, or maintaining key highway facilities, including, but not limited to, highway construction and maintenance activities, traffic management programs, rest area operation and maintenance, emergency response and service patrols, travel information services, parkway and interchange landscape maintenance, snow removal and ice control, dust abatement, or adopt-a-highway litter removal and other highway beautification programs.

“Highway right-of-way” means a strip of property, owned by the Department, within which a highway exists or is planned to be built. The highway right-of-way consists of all lands within the defined highway right-of-way limits, including the airspace above and below. This area typically includes: roadways; shoulders; sidewalks; rest areas; clear zones; and areas for drainage, utilities, landscaping, berms, and fencing.

“Interstate highway” or “Interstate highway system” has the meaning prescribed in A.R.S. § 28-7901, under “Interstate system.”

“Lease” or “Lease agreement” means a written agreement between the Department, or its contractor, and an advertiser or sponsor, which authorizes the advertiser or sponsor to advertise in, or otherwise sponsor, certain assets or facilities of the Department subject to the terms and conditions outlined in the agreement and this Article.

“MUTCD” means the most recent edition of the federal Manual on Uniform Traffic Control Devices for Streets and Highways, as published by the FHWA at [www.mutcd.fhwa.dot.gov](http://www.mutcd.fhwa.dot.gov) and amended by the Department in the Arizona Supplement to the Manual on Uniform Traffic Control Devices for Streets and Highways available on the Department’s web site at [www.azdot.gov](http://www.azdot.gov). The federal Manual on Uniform Traffic Control Devices for Streets and Highways is used by road managers nationwide for uniform installation and maintenance of traffic control devices.

“Primary highway” has the meaning prescribed in A.R.S. § 28-7901, under “Primary system.”

“Rest area” means an area or site established and maintained within, or adjacent to, the right-of-way of an interstate or primary highway under the supervision and control of the Department for the safety, recreation, and convenience of the traveling public.

“Serviceable” means an acknowledgment sign or plaque that is usable, in working order, and adequately fulfills its function.

“Sponsor” means a person, firm, or entity authorized to enter into a lease agreement with the Department or its contractor for sponsorship of a certain element of the Department’s operation of an asset or facility by providing a motor vehicle-, motorist-, or highway-related service or product to the Department, or a monetary contribution to the state highway fund as provided under A.R.S. § 28-7316, in exchange for placement of an acknowledgment sign or plaque to inform the public that a monetary contribution or a motor vehicle-, motorist-, or highway-related service or product was provided by the sponsor.

“Sponsorship agreement” means a written lease agreement between a sponsor and the Department or its contractor, which authorizes sponsorship of a certain element of the Department’s operation of an asset or facility.

**Historical Note:**

New Section R17-1-701 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-702. Program Administration**

- A. The Department may operate an advertising and sponsorship program, or may select a contractor to administer its advertising and sponsorship program, to generate additional revenue for the state highway fund as provided under A.R.S. § 28-7316.
- B. If the Department utilizes a contractor to administer its advertising and sponsorship program, the Department shall solicit

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offers to select a contractor as provided under A.R.S. Title 41, Chapter 23, Arizona Procurement Code.

- C. Use of highway right-of-way for advertising purposes is prohibited, except as provided in 23 U.S.C. 111(b), Rest Areas.
- D. The Department or its contractor may provide opportunities for:
  1. Advertisers to buy or lease advertising space or media on authorized non-highway assets and facilities of the Department;
  2. Advertisers to buy or lease advertising space or media for conducting limited commercial activities at rest areas as permitted under 23 U.S.C. 111; and
  3. Sponsors to provide monetary sponsorship of any element of the Department's operation of highway or non-highway assets and facilities by providing highway-related services or products to the Department, or monetary contributions to the state highway fund as provided under A.R.S. § 28-7316.

**Historical Note:**

New Section R17-1-702 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-703. Request for Advertising or Sponsorship; Approval or Denial; Time-frames**

- A. An advertiser or sponsor seeking to participate in the Department's advertising and sponsorship program by leasing or buying advertising on non-highway assets of the Department, or providing monetary sponsorship of highway-related facilities and assets of the Department, may complete and submit electronically to the Department or its contractor an online request form provided by the Department at [www.azdot.gov](http://www.azdot.gov).
- B. The Department shall, within 10 calendar days of receiving a request under subsection (A) or (C), provide written notice to the advertiser or sponsor acknowledging receipt of the request:
  1. If the request is complete, the notice shall acknowledge receipt of a complete request and indicate the date the Department received the complete request; or
  2. If the request is incomplete, the notice shall indicate the current date and include an itemized list of all additional information the advertiser or sponsor must provide to the Department before the request can be considered complete and subsequently processed.
- C. An advertiser or sponsor with an incomplete request shall respond to the notice provided by the Department under subsection (B)(2) within 15 calendar days after the date indicated on the notice or the Department may deny the request for advertising or sponsorship.
- D. The Department shall render a decision on the request within 20 calendar days after the date on the notice the Department provided to the advertiser or sponsor under subsection (B)(1) acknowledging receipt of a complete request.
- E. For the purpose of A.R.S. § 41-1073, the Department establishes the following time-frames:
  1. Administrative completeness review time-frame: 10 calendar days.
  2. Substantive review time-frame: 20 calendar days.
  3. Overall time-frame: 30 calendar days.
- F. Advertisers and sponsors authorized by the Department or its contractor to participate in the Department's advertising and sponsorship program may lease or buy advertising on authorized assets or facilities of the Department, conduct limited commercial activities at rest areas, or provide monetary sponsorship of authorized facilities and assets of the Department if the advertiser or sponsor:
  1. Is a provider of motor vehicle- or motorist-related goods or services, as provided under A.R.S. § 28-7316;

2. Is authorized to enter into a lease agreement with the Department or its contractor for:
  - a. Advertising on, or sponsorship of, non-highway assets or facilities of the Department;
  - b. Advertising on, or sponsorship of, rest area facilities as permitted under 23 U.S.C. 111; or
  - c. Sponsorship of highway-related assets or facilities of the Department; and
3. Is otherwise eligible under this Article to participate in the Department's advertising and sponsorship program.

**Historical Note:**

New Section R17-1-703 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-704. Advertising or Sponsorship Approval; Agreement; Lease Request for Advertising or Sponsorship; Approval or Denial; Time-frames**

- A. An advertiser or sponsor seeking to participate in the Department's advertising and sponsorship program shall first negotiate and enter into a written advertising or sponsorship agreement with the Department or its contractor.
- B. An advertising or sponsorship agreement made between the Department, or its contractor, and the advertiser or sponsor may be of any duration up to five years and shall:
  1. Provide economic viability and a net benefit to the public, in the discretion of the Department;
  2. Include provisions for maintenance and removal of physical elements of the advertising or sponsorship acknowledgment after the agreement expires or the advertiser or sponsor withdraws;
  3. Identify any specific highway sites, corridors, or operations supported by any monetary contribution provided by a sponsor, if the sponsor is making a monetary contribution;
  4. Be approved by the FHWA Division Administrator before it becomes effective, if the agreement involves the Interstate highway system;
  5. Require that the authorized advertiser or sponsor comply with all state laws prohibiting discrimination based on race, religion, color, age, sex, national origin, and other applicable laws;
  6. Include a termination clause, where applicable, based on:
    - a. Safety concerns, as determined by the Department in its sole discretion;
    - b. Interference with the free and safe flow of traffic, as determined by the Department in its sole discretion;
    - c. Construction activities approved or initiated by the Department in the area, which may pose conflicts with advertising or sponsorship activities, including construction and maintenance projects, road widening, detour, diversion, rebuilding, re-routing, temporary or permanent closure because of weather or other damage, land-use changes, changes in applicable federal or state laws, or any similar reason for termination of the agreement;
    - d. Payment default by the advertiser or sponsor;
    - e. Noncompliance with contractual terms or provisions of the agreement; or
    - f. A determination, made by the Department in its sole discretion, concluding that the agreement is not in the public interest;
  7. Include only the types of advertisers and sponsors deemed acceptable under applicable state and federal laws;
  8. Recommend that for assets and facilities on which federal-aid funds were not used, the advertising or sponsor-

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ship revenue or monetary contributions received as part of the agreement be used for highway purposes as permitted under state law;

9. Require that for assets and facilities on which federal-aid funds were used, the advertising or sponsorship revenue or monetary contributions received as part of the agreement be used only for highway purposes;
  10. Require that for rest areas authorized for limited commercial activities under 23 U.S.C. 111, the advertising or sponsorship revenue or monetary contributions received as part of the agreement be used to cover the costs of acquiring, constructing, operating, and maintaining rest areas;
  11. Require the advertiser or sponsor to certify that the advertiser or sponsor will comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and contractual requirements of the Department's advertising and sponsorship program and maintain content- and viewpoint-neutral standards as provided under this Article; and
  12. Require the advertiser or sponsor to acknowledge that it is the Department's intent to preserve the assets and facilities of the Department as a non-public forum, notwithstanding the placement in those locations of the advertising or sponsorship content referenced in the agreement.
- C. The Department or its contractor shall provide a copy of any signed advertising or sponsorship agreement to the advertiser or sponsor if approved.
- D. All advertising or sponsorship agreements under this Article are public records under A.R.S. Title 39, Chapter 1, Article 2, and A.R.S. Title 41, Chapter 1, Article 2.1. The Department or its contractor shall not agree with any advertiser or sponsor to keep confidential, or not to disclose upon receipt of a public record request, either the content of any written agreement under this Article, or the negotiations leading up to any agreement, nor the advertiser's proprietary or trade information disclosed to the Department or its contractor in the course of negotiating or executing such written agreement, without regard to whether such information, including a logo, slogan, or other commercial message is claimed to be confidential, proprietary, trademarked, copyrighted, or otherwise registered by the advertiser, sponsor, or agent with rights reserved.

**Historical Note**

New Section R17-1-704 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-705. Advertising or Sponsorship Acknowledgment; Content Approval**

- A. An advertiser or sponsor authorized by the Department or its contractor to participate in the Department's advertising and sponsorship program shall obtain Department approval of all advertising or sponsorship content, in accordance with the standards provided under this Article and any other applicable law, before the advertising or sponsorship content appears on any asset or facility the Department designates for advertising or sponsorship opportunities under this Article or any other advertising or sponsorship agreement.
- B. An advertiser or sponsor shall deliver to the Department or its contractor for installation, advertising content, images, or copy that meets all of the Department's content standards and technical specifications provided under this Article for the appropriate creation and display of advertising or sponsorship acknowledgment.

- C. For advertising on, or sponsorship of, authorized assets and facilities of the Department, the Department or its contractor shall:
1. Review all advertising or sponsorship acknowledgment content for compliance with the standards provided under this Article and any other applicable law; and
  2. Ensure that advertising or sponsorship acknowledgment content does not interfere with the business activities of the Department and its customers.
- D. For monetary sponsorship of an element of the Department's operation of any highway-related assets and facilities, the Department or its contractor shall additionally:
1. Ensure that the most current FHWA policy directives are followed when using signs to acknowledge the provision of highway-related services under both corporate and volunteer sponsorship programs;
  2. Ensure that all signs are of reasonable size, as determined by the Department, and as specified in the provisions of the MUTCD and FHWA policy directives; and
  3. Ensure that all sign message content is simple, brief, and minimizes driver distraction.

**Historical Note**

New Section R17-1-705 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-706. Advertising or Sponsorship Acknowledgment; Prohibited Content**

- A. The Department shall deny a request for placement of advertising or sponsorship content if the content is not for a motor vehicle-, motorist-, or highway-related service, message, or product, unless otherwise authorized by law. The Department shall also deny a request for placement of advertising or sponsorship content if the content is likely to:
1. Conflict with other advertising or sponsored content for which the Department has an existing or pending agreement;
  2. Conflict with the reasonable standards established by the Department under this Section;
  3. Conflict with the time, place, manner, or duration of the Department's office or highway operations or security;
  4. Create an unreasonable risk of injury to a person or risk of damage to property;
  5. Interfere with the work of a Department employee or the business or mission of the Department; or
  6. Result in non-compliance with other applicable statutes or rules.
- B. The Department, in its sole discretion, may reject types of advertising or sponsorship content that the Department deems unacceptable for its advertising and sponsorship program. Content deemed unacceptable by the Department for its advertising and sponsorship program shall include any advertising or sponsorship content that:
1. Contains obscene, pornographic, indecent or explicit messages, or contains an offensive level of sexual overtones, innuendo, or double entendre, as determined by the Department in accordance with community standards in the vicinity of where the content would be displayed;
  2. Contains profanity or vulgar language;
  3. Creates non-compliance with federal and state nondiscrimination laws, regulations, and policies;
  4. Denigrates a person, organization, or group based on gender, sexual orientation, religion, race, ethnic or political affiliations, or national origin;
  5. Includes the name of a person, organization, or group that has historically advocated the denigration of other persons or groups based on gender, sexual orientation, reli-

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- gion, race, ethnic or political affiliations, or national origin;
6. Includes or concerns political or election campaign messaging, imagery, or symbolism;
  7. Promotes, identifies, highlights, criticizes or endorses a political candidate, political party or movement, or any ballot measure circulated, submitted, or scheduled for consideration by the electorate of any jurisdiction, past, present, or future;
  8. Promotes, identifies, highlights, suggests, or expresses an opinion for or against contraceptive products or services, or any services related to abortion, euthanasia, or counseling with regard to any of these products, services, procedures, or issues;
  9. Promotes, identifies, highlights, suggests, or expresses an opinion for or against the use of alcohol, tobacco, marijuana or firearms;
  10. Promotes, identifies, highlights, or suggests the use of a drug or other substance in violation of either federal or state law or regulations; or
  11. Promotes, identifies, highlights, or suggests the use of products or services with sexual overtones such as massage parlors, escort services, or establishments for show or sale of X-rated, adult-only, or pornographic movies, products or services, or for establishments primarily featuring nude or semi-nude images or performances.

**Historical Note**

New Section R17-1-706 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-707. Denial of a Request for Advertising or Sponsorship; Administrative Hearing; Time-frames**

- A. An advertiser or sponsor whose request for placement of advertising or sponsorship content is denied by the Department may request an administrative hearing in connection with the denial, or any other action taken by the Department in connection with the rules prescribed in this Article, as provided under A.R.S. Title 41, Chapter 6, Article 6, and Article 5 of this Chapter, as applicable.
- B. If the Department denies a request for placement of advertising or sponsorship content, the Department or its contractor shall send written notification of the denial to the advertiser or sponsor within five calendar days of denying a request for placement of advertising or sponsorship content. Written notification of the denial shall state:
  1. The Department's reason for the denial, citing all applicable supporting statutes or rules;
  2. The advertiser's or sponsor's right to request a hearing under A.R.S. § 41-1065 to contest the Department's decision; and
  3. The time-frame for requesting a hearing with the Department's Executive Hearing Office as prescribed under A.R.S. § 41-1065 and Article 5 of this Chapter.
- C. If an advertiser or sponsor requests a hearing, the Department shall hold the hearing according to the procedures provided under A.R.S. Title 41, Chapter 6, Article 6, this Article, and 17 A.A.C. 1, Article 5, as applicable. The Department shall:
  1. Schedule a hearing within 30 calendar days after receiving a written request for a hearing from an advertiser or sponsor;
  2. Provide to the advertiser or sponsor who requested a hearing, a notice of the scheduled date and time of the hearing at least 20 calendar days before the date set for the hearing, as prescribed under A.R.S. § 41-1061;
  3. Ensure that the presiding officer makes a written determination of the presiding officer's decision or order, includ-

- ing findings of fact and conclusions of law, within 10 calendar days after concluding the hearing; and
4. Mail a copy of the written determination to the advertiser or sponsor who requested the hearing.
- D. The scope of the hearing shall be limited to a determination of whether the Department possessed grounds to take the action indicated in the notice of action provided by the Department in connection with the rules prescribed in this Article.

**Historical Note**

New Section R17-1-707 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-708. Program Administration; Pricing and Lease Procedures; Priority; Renewal**

- A. For administration of the Department's advertising and sponsorship program, the Department or its contractor may use:
  1. Rate schedules that are established and periodically adjusted by the Department; or
  2. Competitive pricing established by one or more offers from potential or current advertisers or sponsors.
- B. The Department or its contractor may use competitive pricing or rate schedules to determine the ranking order of potential or current advertisers or sponsors who may be awarded advertising and sponsorship opportunities at specific locations authorized by the Department for such activities.
- C. In determining competitive pricing and rate schedules, the Department may consider the amount of space available for advertising and sponsorship activities, and one or more of the following additional factors:
  1. The average annual daily traffic at, or adjacent to, the location of the Department's available asset or facility;
  2. The population mix and relative distribution between all other advertisers or sponsors that meet all of the Department's advertising and sponsorship program requirements;
  3. The ranking order determined by the Department or its contractor based on existing rate schedules or competitive pricing proposed or offered by potential or current advertisers or sponsors for each Department authorized location; or
  4. The competitive market conditions, as well as economic, regulatory, logistical, and other related factors as determined by the Department or its contractor.
- D. If any of the factors provided under subsection (C) are used in determining competitive pricing or rate schedules, the Department or its contractor shall make the information relevant to these factors available to advertisers and sponsors on the Department's or its contractor's website.
- E. If a clear ranking order of preference for awarding a specific location cannot be determined using the factors provided under subsection (C), the Department or its contractor shall prioritize the remaining requests for advertising or sponsorship opportunities based on the following additional factors, in order:
  1. The advertiser or sponsor having the closest business location to the Department facility or asset location requested;
  2. The advertiser or sponsor providing the most business days and hours of service to the public; and
  3. The advertiser or sponsor first requesting authorization to place advertising or sponsorship content on the Department authorized facility or asset at that location.
- F. If a potential advertiser or sponsor requests placement of advertising or sponsorship content on a specific Department facility or asset where there are no available placements, a competitive bidding process may be used to determine which

## CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION

potential advertiser will participate, assuming the Department determines in its sole discretion that the location may be made available for advertising or sponsorship.

- G. The Department or its contractor may choose not to renew an existing advertising or sponsorship agreement, or an advertising or sponsorship agreement expiring within the next 60 calendar days, if another eligible advertiser or sponsor with a higher priority ranking requests placement of advertising or sponsorship content at that same location.
- H. The Department or its contractor may collect all applicable taxes due from an advertiser or sponsor under the advertising or sponsorship agreement.
- I. An advertiser or sponsor may request reimbursement of any pre-paid lease payments if, for a reason solely caused by the Department or its contractor, the Department or its contractor does not install the advertiser's or sponsor's content or copy within 90 calendar days after receiving the pre-paid lease payments.
- J. The Department or its contractor shall refund any pre-paid lease payments to an advertiser or sponsor within 30 calendar days after the advertiser or sponsor requests reimbursement under subsection (I).
- K. The Department may require an advertiser or sponsor who requests reimbursement of pre-paid lease payments to provide additional information if required by the State of Arizona for processing a refund.

**Historical Note**

New Section R17-1-708 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-709. Acknowledgment Signs and Plaques; Design and Placement**

- A. The Department may acknowledge sponsors with acknowledgment signs or plaques. Acknowledgment signs and plaques shall meet all of the general principles and specific design and placement criteria prescribed in the MUTCD, Part 2, Signs, as supplemented by the most recent edition of the FHWA Standard Highway Signs and Markings Book:
  1. An acknowledgment sign is installed only as an independent sign assembly unless the acknowledgment sign is part of the Department's Adopt-a-Highway Volunteer Program; and
  2. An acknowledgment plaque is installed only in the same sign assembly below a primary sign that provides the road user specific information on accessing the service being sponsored. A plaque legend is displayed on a separate substrate from that of the sign below which it is mounted.
- B. Acknowledgment signs and plaques shall:
  1. Be appropriately sized for the legibility needs of a bike-way or path user when located on a bikeway or shared-use path;
  2. Be placed near the site being sponsored, consistent with the purpose and principles of traffic control devices in the MUTCD, Part 1, General and Part 2, Signs;
  3. Be placed approximately one mile away from other acknowledgment signs or plaques associated with the same element of the Department's highway operation, such as Adopt-a-Highway, when facing the same direction, as consistent with the purpose and principles of traffic control devices in the MUTCD, Part 1, General and Part 2, Signs;
  4. Display no directional information or indicators;
  5. Display no telephone numbers, internet addresses, or other legends prohibited by the MUTCD for the purpose of contacting the sponsor or to obtain information on the

sponsorship program, such as how to become a sponsor at an available site, unless such information is part of the sponsor's official name; and

- 6. Remain in place only for the duration of the sponsorship agreement.
- C. The Department or its contractor shall not place acknowledgment signs or plaques at key decision points where a driver's attention is more appropriately focused on traffic control devices, roadway geometry, or traffic conditions.

**Historical Note**

New Section R17-1-709 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-710. Criteria for Highway-related Acknowledgment Signs and Plaques**

- A. For highway-related sponsorship opportunities, the Department or its contractor shall:
  1. Ensure that acknowledgment signs and plaques take only the form of static, non-changeable, non-electronic legends to maintain the recognition value of official devices used for traffic control;
  2. Ensure that messages on acknowledgment signs and plaques are not interspersed, combined, or alternated with other official traffic control messages, either in the same display space, by adjacency in the same assembly, or by adjacency of multiple assemblies whose longitudinal separation does not meet the placement criteria contained in the MUTCD, including when placed on opposite sides of the roadway facing the same direction of travel, except as provided for acknowledgment plaques under R17-1-711(B);
  3. Ensure that the focus remains on the service provided rather than on the sponsor, and that the sponsor logo area on an acknowledgment sign or plaque is a horizontally oriented rectangle, consistent with the provisions on business logos in the MUTCD, Chapter 2J, Specific Service Signs. The width of the rectangle shall be at least approximately 1.67 times its height, the total area of which shall not exceed the maximum referenced or specified in this Article or the MUTCD. The word legend describing the activity, such as "SPONSORED BY," shall be composed of upper-case lettering of the FHWA standard alphabets at least three inches high on conventional roads and at least four inches high on expressways and freeways;
  4. Ensure that any slogan displayed on an acknowledgment sign is a brief jurisdiction-wide slogan or that of a program name, such as "ADOPT-A-HIGHWAY." Slogans for companion, supplementary, or other programs unrelated to the service being sponsored shall not be displayed on any acknowledgment sign or plaque, in accordance with the MUTCD, Section 2H.08, Acknowledgment Signs.
  5. Ensure that if a graphic business logo is used to represent a sponsor, instead of a word legend using the FHWA Standard Alphabets, the logo is the principal trademarked official logo that represents the business name of the sponsor. Secondary logos or representations, even if trademarked, copyrighted, or otherwise protected, are classified as promotional advertising and are not allowed as provided under the MUTCD, Section 1A.01, Purpose of Traffic Control Devices;
  6. Ensure compliance with the following design guidelines if a graphic business logo is used to represent a sponsor:
    - a. Logos shall be as simple as possible and provide good readability during both daylight and nighttime hours;

## CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION

- b. Logos may consist of a symbol, trademark, or a legend message identifying the name or abbreviation of a specific business;
  - c. Logos shall not contain a telephone or fax number, street name, e-mail or web address, or a direction indicator as part of the business logo unless such information is part of the sponsor's official name;
  - d. Logos shall not resemble an official traffic control device; and
  - e. Symbols or trademarks used alone for acknowledgment shall be simple and dignified and reproduced in the colors and general shape consistent with customary use, and any integral legend shall be in proportionate size.
7. Obtain an encroachment permit if applicable under 17 A.A.C. 3, Article 5, before installing, maintaining, or removing sponsorship content or copy from a highway-related facility or asset of the Department located along a state highway; and
8. Determine the best placement of sponsorship content or copy and cooperate with the sponsor to provide all appropriate information to the public as outlined in both the contract and the sponsorship agreement, while remaining in full compliance with any encroachment permit requirements, if the contractor requests an encroachment permit under 17 A.A.C. 3, Article 5.
- B.** For highway-related sponsorship opportunities, the Department or its contractor shall not:
- 1. Install acknowledgment signs or plaques overhead due to maximum overall size limitations and related safety considerations. Only roadside, post-mounted installations of acknowledgment signs and plaques are allowed;
  - 2. Allow promotional advertising on any traffic control device or its supports, as provided under the MUTCD, Section 1A.01, Purpose of Traffic Control Devices;
  - 3. Allow acknowledgment signs and plaques to contain an alternative business name that appears to have the sole or primary purpose of circumventing the MUTCD provisions. Such content or copy is considered promotional advertising rather than acknowledgment of a sponsor providing a highway-related service; and
  - 4. Allow sponsorship acknowledgment signs or plaques that include displays that mimic, or in the Department's sole discretion, attempt to mimic, imitate, or resemble advertising. The determination of whether a sign mimics or constitutes advertising lies solely with the Department, applying in good faith the relevant standards set forth by the FHWA.
- Historical Note**
- New Section R17-1-710 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).
- R17-1-711. Highway-related Sponsorship Restrictions and Allowances; Existing Leases or Agreements**
- A.** For sponsorship of rest areas, the Department or its contractor:
- 1. May install one acknowledgment sign for each direction of travel on the highway mainline;
  - 2. May place additional acknowledgment signs within a rest area, provided that the sign legends are not visible to the highway mainline traffic and do not pose safety risks to rest area users;
  - 3. Shall not append acknowledgment signs to any other sign, sign assembly, or other traffic control device; and
  - 4. Shall not place acknowledgment signs within 500 feet of other traffic control devices located on the highway mainline.
- B.** For sponsorship of travel service programs that are not site specific, such as 511 traveler information, radio-weather, radio-traffic, and emergency service patrol, the Department or its contractor may mount an acknowledgment plaque below a general service sign for that program in the same sign assembly. The acknowledgment plaque shall:
- 1. Be a horizontally oriented rectangle, with the horizontal dimension longer than the vertical dimension;
  - 2. Be of a size not to exceed approximately one-third of the area of the general service sign below which it is mounted or 24 square feet, whichever is less;
  - 3. Be of a size not to exceed approximately one-third of the area of the largest size prescribed in the MUTCD for the specific standard sign below which the acknowledgment plaque is mounted, even if the standard sign was enlarged under the MUTCD, Sections 2A.11, Dimensions and 2I.01, Sizes of General Service Signs, or was designated in the MUTCD as being oversized for its application; and
  - 4. Be of a size that is equivalent to the unmodified national standard for the sign, as provided in the MUTCD, even if the size of the standard sign is modified based on the Arizona supplement to the MUTCD, or other equivalent, and would result in a sign size larger than that of the standard sign prescribed in the MUTCD.
- C.** For sponsorship by way of providing highway-related services, products, or monetary contributions that result in a naming sponsorship granted by the Department, where the sponsor is allowed naming rights to an officially mapped, named or numbered highway, the Department or its contractor:
- 1. May use only acknowledgment signs to place an unofficial overlay or secondary designation in the name of the sponsor on the official highway name or number through proclamation, contract, agreement, or other means for acknowledgment within the highway right-of-way; and
  - 2. Shall not display on an acknowledgment sign a legend that states, either explicitly or by implication, that the highway is named for the sponsor.
- D.** For the purpose of protecting life or property, the Department may install on any highway or non-highway asset or facility under its jurisdiction a changeable message sign, traffic control device, or other official sign provided by a sponsor. The name of the sponsor who made placement of the item possible may be affixed to the official sign or device in a conspicuous location visible from the main traveled roadway, unless specifically prohibited by federal law, including on the sign base, apron, supports, or other structural member. No more than one sponsor's name may appear on any one official sign or device at any given time.
- E.** The Department or its contractor shall solely determine the placement of any new advertising or sponsorship content as new opportunities arise, whether a previously leased location is vacated, a waiting list exists, another advertiser or sponsor seeks to lease or sponsor a specific asset or facility, or a new location is identified and made available for advertising or sponsorship opportunities.
- F.** The provisions of this Article apply to new and modified acknowledgment sign installations in support of national uniformity and consistency. Acknowledgment signs installed prior to the effective date of this Section are subject only to the terms and conditions provided in any existing lease or other agreement already in effect between the Department and an advertiser or sponsor. Replacement of an existing acknowledgment sign for compliance with this Article is not required unless the currently installed acknowledgment sign is no longer serviceable or the advertiser or sponsor requests a modification.

## CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION

cation of the sponsor name or logo that is consistent with this Article.

**Historical Note**

New Section R17-1-711 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-712. Program Eligibility and Compliance**

- A. An advertiser or sponsor participating in the Department's advertising and sponsorship program shall ensure compliance with A.R.S. § 28-7316 and all criteria established under this Article.
- B. The Department or its contractor may choose not to enter into, or renew, an advertising or sponsorship agreement if the eligibility criteria provided under this Article is not met.
- C. An advertiser or sponsor is ineligible to place advertising or sponsorship content on any asset or facility of the Department if:
  1. Thirty calendar days have elapsed since the Department or its contractor issued a notice of default to the advertiser or sponsor and the default remains uncured, or
  2. The advertiser or sponsor has defaulted on an advertising or sponsorship agreement made with the Department or its contractor.

**Historical Note**

New Section R17-1-712 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-713. Advertising or Sponsorship Agreement or Lease Termination**

- A. If an advertiser or sponsor becomes ineligible to participate in the Department's advertising and sponsorship program, the Department or its contractor shall remove any existing content or copy from the Department asset or facility after notifying the ineligible advertiser or sponsor as provided in the advertising or sponsorship agreement.
- B. An advertiser or sponsor who becomes ineligible to participate in the Department's advertising and sponsorship program may be held responsible for the costs involved with removal or reinstallation of advertising or sponsorship acknowledgment signs in accordance with the terms and conditions provided in

the advertiser's or sponsor's written lease or other agreement with the Department or its contractor.

**Historical Note**

New Section R17-1-713 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

**R17-1-714. Removal of Advertising or Sponsorship Content; Program Termination**

- A. If the Department temporarily requires removal of an acknowledgment sign or advertising or sponsorship content or copy from any Department facility or asset for construction activities in the area that may pose conflicts with the sponsorship, as provided under R17-1-704(B) (i.e. sign needs to be removed due to a road widening project), the Department or its contractor, in its sole discretion, may:
  1. Relocate the acknowledgment sign or advertising or sponsorship content or copy to a comparable site for the duration of the advertising or sponsorship agreement, if requested by the advertiser or sponsor and the acknowledgment sign or advertising or sponsorship content or copy is for a program that is not site-specific; or
  2. Re-erect the acknowledgment sign or advertising or sponsorship content or copy at its original location once the construction activities are completed, if possible, and revise the original advertising or sponsorship agreement to remain in place until the minimum lease obligations are fulfilled.
- B. If the Department's advertising and sponsorship program is terminated, the Department or its contractor shall:
  1. Notify an advertiser or sponsor by mail, or a mutually agreed upon electronic communication method, of the program termination and the location where an advertiser or sponsor may claim its materials, if any;
  2. Remove all advertising or sponsorship content or copy from any Department facilities or assets; and
  3. Refund unused lease payments to each advertiser or sponsor on a prorated basis.

**Historical Note**

New Section R17-1-714 made by final rulemaking at 24 A.A.R. 673, effective May 7, 2018 (Supp. 18-1).

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.

28-7045. Director; state highway and route use; rules

The director shall exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes and adopt rules regarding the use as the director deems necessary to prevent the abuse and unauthorized use of these highways and routes.

**DEPARTMENT OF ECONOMIC SECURITY**

Title 6, Chapter 13, Article 1, Tuberculosis Control Program; Article 8, Short-Term Crisis Services



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 22, 2019

**SUBJECT: ARIZONA DEPARTMENT OF ECONOMIC SECURITY (F19-0702)**  
Title 6, Chapter 13, Articles 1 and 8, State Assistance Program

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This five year review report (5YRR) from the Department of Economic Security (Department) relates to Articles 1 and 8 of Title 6, Chapter 13, State Assistance Program. The rules address the following:

- **Article 1: Tuberculosis Control Program;**
- **Article 8: Short-Term Crisis Services.**

In the previous 5YRR from 2014, the Department planned no actions relative to Article 1. In regard to Article 8, the Department did not complete the proposed course of action in the 2014 5YRR. In the previous 5YRR, the Department intended to amend Article 8 to eliminate the face-to-face interview after the December 2014 expiration of the regulatory moratorium. Because subsequent regulatory moratoria have been in place since December 2014, the rulemaking and amendments to Article 8 were impacted.

### **Proposed Action**

#### **Article 1:**

The Department intends to pursue a rulemaking to outline the appellate process for all administrative hearings conducted by the Appellate Services Division. The Department intends for this rulemaking to consolidate the current rules, eliminate separate hearing

rules for multiple chapters under Title 6, and increase consistency to stakeholders, program participants, and community partners. In September 2018, the Department received an exception from the regulatory moratorium which allows the Department to proceed with a rulemaking and consolidation process. The Department plans to submit an NFR to the Council in June 2020.

Article 8:

The Department is reassessing a rulemaking to address current issues with Article 8. If given an exception from the moratorium, the Department anticipates submitting amended rules to the Council 20 months after receiving the exception.

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

Yes, the Department cites to both general and specific authority for the rules of Article 1 and Article 8.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department has determined that the economic impact of Article 1 does not differ significantly from what was originally determined by the economic, small business, and consumer impact statement (EIS) from the most recent rulemaking in 2012. In State Fiscal Year (SFY) 2018, 15 individuals received Tuberculosis Control payments. In total, the Family Assistance Administration issued \$8,500 in payments.

Article 8 was adopted under an exemption from Title 41, Chapter 6 in 1997, and no economic impact statement was prepared at that time. In SFY 2018, the Department's Short-Term Crisis services served 1,755 households. The Department has received \$3.724 million in Temporary Assistance for Needy Families (TANF) funds to support the program during SFY 2019.

The stakeholders include the Department, the general public, health care providers, utility providers, housing providers, and other service providers.

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

Yes. The Department has determined that with the amendments included in this Five-Year Review Report, the rules under review will provide the least intrusive and least costly method of achieving the regulatory objectives. The Department has determined that while the state will bear some financial burden in the form of compliance costs, the increased public health outcomes will outweigh these costs.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department has not received any written criticisms of the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes.

Article 1:

The Department determined that the rules in Title 6, Chapter 13, Article 1, are generally clear, concise, and understandable. However, the Department notes that several rules in the Article may be revised to better reflect practices. The Department determined that these rules are not consistent with other rules and statutes. However, the Department notes that some inconsistent rules expire in July 2019. Further, the Department mentions that several rules in Article 1 may be revised or enhanced to be more accurate. The Department determined that several rules in Article 1 are ineffective. The ineffective rules are as follows: R6-13-142, R6-13-143, R6-13-144, R6-13-147, R6-13-148, R6-13-152, R6-13-153, R6-13-154, R6-13-155, R6-13-156, R6-13-158, R6-13-159. The Department indicates the reasons for ineffectiveness and ways to increase the effectiveness of the Article 1 rules.

Article 8:

The Department determined that the rules in Article 8 are generally clear, concise, and understandable. However, the Department notes three rules (R6-13-802 subpart B.1.c, R6-13-807 subparts A.6, A.3, and A.4) with subparts that could be made more clear, concise, and understandable and notes ways to change the subpart citations and wording to increase clarity. The Department noted one rule in Article 8 that is more stringent than federal requirements, however, the Department mentions the potential removal of this more stringent rule. Finally, the Department determined that one rule in Article 8, R6-13-807, is ineffective in achieving its objective. The Department noted slight potential modifications to several of this rule's subparts in order to more accurately reflect Arizona utility rates, federal and state funding and rental costs in the state of Arizona.

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

Yes.

Article 1:

The Department indicates that several rules in Article 1 regarding Appeals and Fair Hearings that are not enforced as written. The Department notes that the rules do not accurately reflect current Department practices but mentions that the Department policies more accurately reflect rules and procedures enumerated in Chapter 14 of Title 6.

Article 8:

DES indicates that rules in Title 6, Chapter 13, Article 8, are enforced as written.

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

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

Article 1:

The Department indicates that no federal law exists in regard Article 1.

Article 8:

The Department indicates that the rules in Title 6, Chapter 13, Article 8, are more stringent than corresponding Temporary Assistance for Needy Families (TANF) rules because the Department requires a face to face interview. However, the TANF rules do not specifically address interview requirements.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable.

9. **Conclusion**

Although not all rules are clear, concise, understandable, and effective presently, the Department indicated several methods to increase the clearness, conciseness, understandability, and effectiveness of the rules. As indicated above and in the report, the Department intends to pursue a rulemaking for Article 1 in order to consolidate current rules, eliminate separate hearing rules for multiple chapters, and increase consistency to stakeholders, program participants, and community partners. Further, the Department plans to proceed with a rulemaking and consolidation process and intends to submit an NFR in June 2020. In regard to Article 8, the Department is reassessing the rulemaking to address current issues. If the exception from the moratorium is given, the Department anticipates submitting amended rules 20 months later. Council staff recommends approval of this report.



DEPARTMENT OF ECONOMIC SECURITY

*Your Partner For A Stronger Arizona*

Douglas A. Ducey  
Governor

Michael Traylor  
Director

APR 19 2019

Ms. Nicole Sornsin  
Council Chair  
Governor's Regulatory Review Council  
Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

Dear Ms. Sornsin:

Enclosed is the Arizona Department of Economic Security (Department) Five-Year Review Report on A.A.C. Title 6, Chapter 13, State Assistance Program. Included with the report are copies of the authorizing statutes and 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, please contact Rod Huenemann, Rules Analyst, Policy and Planning Administration, at (602) 542-6159.

Sincerely,

Michael Traylor  
Director

Enclosure

**Department of Economic Security  
Title 6, Chapter 13 – State Assistance Program  
Five-Year Review Report**

**1. Authorization of the rule by existing statutes:**

General Statutory Authority: A.R.S. §§ 41-1954(A)(3) and 46-134(1), and 46-134(10)

Specific Statutory Authority: A.R.S. § 36-716 authorizes the Tuberculosis Control Program.

A.R.S. § 46-241.01 authorizes the Short-term Crisis Services Program.

**2. The objective of each rule:**

**ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM**

<b>Rule</b>	<b>Objective</b>
R6-13-102	This rule defines terms used in Chapter 13 in order to allow potential applicants and the public to better understand the rules that apply to the Tuberculosis Control Program.
R6-13-103	This rule specifies individuals who may be potentially eligible to receive Tuberculosis Control Program assistance which enables individuals to better determine whether they may be potentially eligible for this assistance and to make an informed decision about submitting an application.
R6-13-104	This rule notifies an applicant of the various methods by which they may submit an application for Tuberculosis Control Program assistance to the Family Assistance Administration (FAA).
R6-13-105	This rule specifies the actions that the Department will take upon receipt of an application for Tuberculosis Control Program assistance.
R6-13-106	This rule specifies the responsibilities of an applicant during the initial eligibility interview process, enabling the applicant to be better prepared for their interview.
R6-13-107	This rule specifies the responsibilities of the Department during the initial eligibility interview process, in order to allow the applicant to better understand the eligibility information that will be requested of them and the methods by which they may provide such information, if needed, after the interview.

Rule	Objective
R6-13-108	This rule specifies the responsibilities of the Department when determining eligibility for Tuberculosis Control Program assistance.
R6-13-109	This rule explains what applicant and recipient information the Department shall retain and maintain and the time frames for retaining and maintaining such information.
R6-13-110	This rule cites the Department's responsibilities in maintaining the confidentiality of an applicant's or recipient's records.
R6-13-111	This rule provides notice to the public of the Department's responsibility to make the FAA Policy Manual available to the public on the Department's internet website and to make the online manual accessible for public inspection at each FAA office.
R6-13-112	This rule explains the three nonfinancial eligibility factors that an applicant must satisfy in order to be potentially eligible for Tuberculosis Control Program assistance, enabling individuals to better determine whether they may be potentially eligible for this assistance and to make an informed decision as to submitting an application.
R6-13-113	This rule establishes a resource limit that the applicant and the assistance unit may not exceed in order to be eligible for Tuberculosis Control Program assistance. The rule also specifies which resources the Department shall exclude when determining the amount of countable resources.
R6-13-114	This rule requires the Department to verify the value of the resources of an applicant and assistance unit when determining eligibility for Tuberculosis Control Program assistance.
R6-13-115	This rule specifies the Department's policies regarding whether a resource is considered available or unavailable to an applicant or the assistance unit when the Department determines the amount of resources countable toward Tuberculosis Control Program eligibility.
R6-13-116	This rule explains the Department's policies for the treatment of lump-sum payments when determining eligibility for Tuberculosis Control Program assistance.
R6-13-117	This rule defines the term "income" and requires the Department to consider all non-excluded income received by an assistance unit when determining eligibility for Tuberculosis Control Program assistance.
R6-13-118	This rule lists the types of income that the Department shall exclude when determining eligibility for Tuberculosis Control Program assistance.

Rule	Objective
R6-13-119	This rule explains the methods by which the Department shall determine the countable monthly income of an assistance unit and the method used to determine a cash benefit amount.
R6-13-120	This rule requires the Department to calculate an assistance unit's countable monthly gross income by converting countable income received other than monthly into a monthly amount.
R6-13-121	This rule explains the various methods the Department uses to convert income that is received less frequently than on a monthly basis into a monthly amount when the Department determines an assistance unit's countable monthly gross income.
R6-13-122	This rule requires the Department to verify all income prior to determining eligibility and a benefit amount.
R6-13-123	This rule requires the Department to subtract a work expense deduction from the earned income of an employed assistance unit member when determining the countable monthly net income.
R6-13-124	This rule explains the methodology used when determining income eligibility for, and the amount of, a Tuberculosis Control Program cash benefit.
R6-13-125	This rule requires the Department to pay benefits to an assistance unit for each month of eligibility and establishes the time frames for both when the initial month benefits and the on-going monthly benefits are to be available to the assistance unit.
R6-13-126	This rule explains the methods used by the Department to provide assistance payments to the assistance unit.
R6-13-127	This rule explains who the EBT card may be issued to and the Department's responsibilities in issuing the EBT card.
R6-13-128	This rule explains the recipient's right to designate up to two EBT Alternate Card Holders and the responsibilities of an EBT Alternate Card Holder.
R6-13-129	This rule explains the entitlement to any benefits remaining in its EBT account when the assistance unit moves to another state.
R6-13-130	This rule explains the recipient's responsibilities in reporting a lost, stolen, or damaged EBT account access card and the Department's responsibilities in issuing a new card.
R6-13-131	This rule notifies a recipient that they will lose access to their EBT account when there has been no account activity for 90 days and the process to follow if the recipient wants to regain access to their EBT account. Also, this rule notifies a recipient that access to their EBT account will terminate when the EBT account has been inactive for a

Rule	Objective
	period of one year after the original date of availability of benefits and that any assistance benefits in the account at that time will be recouped by the Department.
R6-13-132	This rule requires the Department to correct underpayments of assistance by issuing the assistance unit a supplemental payment.
R6-13-133	This rule specifies when an overpayment of assistance exists and the Department's responsibility to pursue collection of an overpayment under state law.
R6-13-134	This rule explains the overpayment recovery methods that the Department uses.
R6-13-135	This rule explains the method the Department uses to establish the beginning date of an overpayment of assistance.
R6-13-136	This rule specifies that the Department shall terminate eligibility when notified by the Department of Health Services of completion of the recipient's treatment for tuberculosis.
R6-13-137	This rule requires the Department to complete a review of all eligibility factors for each assistance unit at least once every six months and specifies the Department's responsibilities in the review process.
R6-13-138	This rule informs the recipient of the requirement to report changes, the timeframe for timely reports of changes, and the changes that need to be reported and verified.
R6-13-139	This rule lists the Department's responsibilities when processing a change.
R6-13-140	This rule explains the circumstances in which the Department is required to reinstate benefits when a case has been terminated.
R6-13-141	This rule explains the Department's requirement to send the recipient a notice of adverse action and the information that must be included in such a notice.
R6-13-142	This rule establishes that an applicant or recipient is entitled to request an administrative hearing to challenge an adverse action taken by the Department. The rule informs an applicant or recipient of the adverse actions that may be appealed.
R6-13-143	This rule clarifies the terms "day" and "work day" and computation of time relating to timeframes used in the hearings and appeals processes.
R6-13-144	This rule explains the process by which an applicant or recipient can request an appeal of an adverse action and the Department's responsibilities in processing the request.
R6-13-145	This rule explains the responsibilities of the FAA for transmitting an appeal request to the Office of Appeals.

Rule	Objective
R6-13-146	This rule permits a recipient to continue to receive assistance at the benefit level they were receiving prior to an adverse action when an appeal request has been timely submitted. The rule lists the circumstances under which a stay of adverse action is not required.
R6-13-147	This rule requires the Office of Appeals to schedule a hearing, the time frame for scheduling the hearing, and the notice requirements for all interested parties.
R6-13-148	This rule provides parties in an appeal with the ability to request a postponement of a hearing, and the process for requesting a postponement.
R6-13-149	This rule enumerates the responsibilities of the Hearing Officer in the appeals process.
R6-13-150	This rule specifies the process by which a party may request a change of Hearing Officer and the responsibilities of the party and the Office of Appeals in this process.
R6-13-151	This rule specifies the process by which a party may request that a subpoena be issued and the responsibilities of the party, the Hearing Officer, and the Office of Appeals in this process.
R6-13-152	This rule lists the rights of the appellant and the Department in the appeals process.
R6-13-153	This rule explains the process by which an appellant may withdraw an appeal and the responsibilities of the Office of Appeal in this process.
R6-13-154	This rule explains the requirements of the Hearing Officer in situations in which the appellant fails to appear for a scheduled hearing and specifies the actions that an appellant may take to request that the proceedings be reopened.
R6-13-155	This rule explains the hearing procedures, including the responsibilities of the parties and the Hearing Officer.
R6-13-156	This rule establishes a timeframe for the issuance of a hearing decision, the elements which must be included in the decision, and the notification requirements.
R6-13-157	This rule explains the types of decisions that may be rendered by the Hearing Officer and the effect of those decisions.
R6-13-158	This rule permits a party to appeal an adverse decision issued by a hearing officer to the Department's Appeals Board and explains the process for filing the appeal.
R6-13-159	This rule specifies the responsibilities of the Appeals Board when a party has appealed an adverse decision issued by a hearing officer.
R6-13-160	This rule stipulates the rights of a party adversely affected by an Appeals Board decision to seek judicial review pursuant to state law.

<b>Rule</b>	<b>Objective</b>
R6-13-161	This rule stipulates that assistance payments are contingent on budgetary appropriation.

ARTICLE 8. SHORT-TERM CRISIS SERVICES

<b>Rule</b>	<b>Objective</b>
R6-13-801	The objective of this rule is to define terms used in Article 8, Short-term Crisis Services.
R6-13-802	The objective of this rule is to establish the short-term crisis services application process.
R6-13-803	The objective of this rule is to provide notice to contract providers of the requirements by which an applicant would be eligible or ineligible for the services.
R6-13-804	The objective of this rule is to establish the financial eligibility requirements regarding countable income for households applying for short-term crisis services.
R6-13-805	The objective of this rule is to define the emergent need eligibility requirements for households experiencing, or which expect to experience, an emergent need.
R6-13-806	The objective of this rule is to define the types of assistance and the duration for short-term crisis services.
R6-13-807	The objective of this rule is to establish the payment period and the cap amounts for emergency shelter at homeless facilities, utility assistance, utility repair or replacement and deposit, rent, rental deposits or mortgage assistance, and for special needs.
R6-13-808	The objective of this rule is to establish the contract agency's responsibility for sending the applicant a decision letter upon determination of eligibility.
R6-13-809	The objective of this rule is to establish the complaint, hearing and appeal process for denials of eligibility, the amount of assistance awarded and termination of reduction of assistance.

**3. Are the rules effective in achieving their objectives?**

Yes

No

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

**ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM**

Several of the rules in Article 1 address appeals and fair hearings processes that are conducted by and should align with the practices of the Department's Appellate Services Administration/Office of Appeals. The rules identified below have become outdated and do not reflect current practice.

In July 2018 the Department filed Emergency Rules for Title 6, Chapter 14 – Food Stamps Program. These Emergency Rules were extended in January 2019 and will expire in July 2019. Article 4 of the Emergency Rules is specific to Appeals and Fair Hearings and reflects current practices utilized by the Department's Appellate Services Administration/Office of Appeals. While the Emergency Rules are contained in Chapter 14, many of the practices apply to Appeals and Fair Hearings for multiple programs including the Tuberculosis Control Program.

For the purposes of this Five-Year Review Report, the rules identified below could be more effective if revised to more accurately describe various elements of the Appeals and Fair Hearings practices that have been instituted since the Tuberculosis Control Program rules were revised in 2012 and the last Five-Year Review Report was completed in 2014.

<b>Rule</b>	<b>Explanation</b>
R6-13-142	This rule is not effective because the language in section (A) is too restrictive. In addition to appealing an adverse action, any applicant or recipient who disagrees with any action or inaction by the Department has the right to challenge the action or inaction by requesting an administrative or fair hearing. (R6-14-401)
R6-13-143	This rule is not effective because rather than considering a document that is sent by the United States Postal Service as having been given to the addressee on the date mailed, documents sent by the Department are considered to be received by an applicant or recipient on the fifth calendar day after the date mailed. (R6-14-402)

Rule	Explanation
R6-13-144	This rule is not effective because in addition to submitting a verbal or written request for a hearing, an applicant or recipient may now file a request for hearing by fax or Internet. (R6-14-403)
R6-13-147	This rule is not effective because the information that is required to be included in a Notice of Hearing in section (D) does not include the additional information that the Department now provides in the notice. (R6-14-405)
R6-13-148	This rule is not effective because Department policy now allows the appellant to receive one postponement of the first scheduled hearing, not to exceed 30 days. The Office of Appeals may grant subsequent postponements upon a showing of good cause. (R6-14-406)
R6-13-152	This rule is not effective because Department policy now allows the appellant the right to advance arguments without undue interference and to question or refute any testimony or evidence. This additional right is not currently specified in the rule. (R6-14-410)
R6-13-153	This rule is not effective because it does not include the Department's responsibility to send a written notification to the appellant confirming that an oral request to withdraw an Appeal has been received and providing the appellant an opportunity to reinstate a hearing. (R6-14-411)
R6-13-154	This rule is not effective because the Department has instituted some procedural changes to the process for establishing good cause for failure to appear at a Hearing. For example, a separate Hearing to determine the validity of a good cause claim is no longer required when the party requests that a Hearing be reopened and provides an acceptable good cause reason for having not attended the original Hearing. The hearing officer may now reopen the proceedings and schedule a new hearing with notice to all parties. (R6-14-412)
R6-13-155	Regarding the Hearing proceedings, the Arizona Revised Statutes citation in section (C) has changed. Also, the Office of Appeals no longer provides a transcript of hearings. The Office provides an audio recording of the hearing on a compact disk at no charge. (R6-14-413)
R6-13-156	The Hearing decision now contains an additional statement that an appeal of the decision may result in a reversal of the decision. (R6-14-414)
R6-13-158	Sections (C) and (D) in this rule are no longer required. (R6-14-416)

Rule	Explanation
R6-13-159	Section (B) in this rule regarding additional actions that the Appeals Board may take following a decision is no longer accurate. (R6-14-417)

**ARTICLE 8. SHORT-TERM CRISIS SERVICES**

Rule	Explanation
R6-13-807	<p>This rule could be made more effective with slight modification to several of its subparts:</p> <p>A.1. The allowance for emergency shelter is \$5,000. This service today is provided for the most part by other State programs except in uncommon circumstances. To avoid duplication of services, the Department is considering a reduction in this benefit level to \$2,500.</p> <p>A.2. The current benefit limit for utility assistance is \$500. Utility costs, especially electricity, have risen an average of 30-40 percent for households in Arizona over the last several years and are likely to continue increasing. The Department is considering raising this benefit limit to \$1,200, to align with the limit on federally funded utility repair or replacement and deposit in subpart A.3 of this rule.</p> <p>A.5. The benefit limit for rent, rental deposits and mortgage assistance is currently \$1,500. This limit reduces the effectiveness of STCS at assisting clients in the face of increases in the costs of obtaining and maintaining housing in Arizona. Rental costs in Arizona increase on average 3.3 percent per year and rose 5.6 percent over the last 12 months. More than 70 percent of STCS households are renters. Rental services are by far the most common assistance provided under STCS. The Department is considering increasing the benefit limit to \$2,000 for rental/mortgage assistance and deposits.</p>

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

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM

Rule	Explanation
R6-13-142	In July 2018 the Department filed Emergency Rules for Title 6, Chapter 14 – Food Stamps Program. These Emergency Rules were extended in January 2019 and will expire in July 2019. Article 4 of the Emergency Rules is specific to Appeals and Fair Hearings and reflects current practices utilized by the Department’s Appellate Services Administration/Office of Appeals. For consistency, there are several Appeals and Fair Hearings related rules in Article 1 that may be revised or enhanced to more accurately state current Department policies and procedures.
R6-13-143	
R6-13-144	
R6-13-147	
R6-13-148	
R6-13-152	
R6-13-153	
R6-13-154	
R6-13-155	
R6-13-156	
R6-13-158	
R6-13-159	

ARTICLE 8. SHORT-TERM CRISIS SERVICES

Rule	Explanation
R6-13-802	This rule requires applicants to participate in a face-to-face interview in order to apply for Short-term Crisis Services. This is more stringent than federal TANF regulations, and the Department is considering removing this requirement.

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

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency(s) proposal for resolving the issue.*

ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM

The Department enforces rules in Chapter 13 Article 1 to the extent that they do not conflict with state or federal law or Department policy.

Rule	Explanation
R6-13-142	As noted in sections 3 and 4 of this report, there are several Appeals and Fair Hearings related rules in Article 1 that may be revised or enhanced to more accurately reflect current Department practice. The Department follows the policies and procedures enumerated in Title 6, Chapter 14 – Food Stamps Program, Article 4 (Appeals and Fair Hearings) across multiple programs, including the Tuberculosis Control Program.
R6-13-143	
R6-13-144	
R6-13-147	
R6-13-148	
R6-13-152	
R6-13-153	
R6-13-154	
R6-13-155	
R6-13-156	
R6-13-158	
R6-13-159	

ARTICLE 8. SHORT-TERM CRISIS SERVICES

The Department enforces rules in Chapter 13 Article 8 as written.

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

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM

Rule	Explanation
R6-13-142	The rules in Chapter 13, Article 1 are generally clear, concise, and understandable.
R6-13-143	As noted in sections 3, 4, and 5 of this report, there are several Appeals and Fair
R6-13-144	Hearings related rules in Article 1 that may be revised to more accurately reflect
R6-13-147	current Department practices. The Department follows the policies and procedures
R6-13-148	enumerated in Title 6, Chapter 14 – Food Stamps Program, Article 4 (Appeals and
R6-13-152	Fair Hearings) across multiple programs, including the Tuberculosis Control
R6-13-153	Program.
R6-13-154	
R6-13-155	
R6-13-156	
R6-13-158	
R6-13-159	

ARTICLE 8. SHORT-TERM CRISIS SERVICES

Rule	Explanation
R6-13-802	Subpart B.1.c of this rule cites R6-13-805 for calculation of gross monthly income, but the correct citation is R6-13-804.
R6-13-807	Subpart A.6 of this rule cites R6-13-808(A)(4) for special needs, but the correct citation is R6-13-806(A)(4).
R6-13-807	Subparts A.3 and A.4 require technical correction for clarity. A.3 should read: "For federally funded utility deposit, equipment repair or replacement, the actual cost or \$1,200, whichever is less." A.4 should read: "For state-funded utility deposit, equipment repair or replacement, the actual cost or \$600, whichever is less."

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

Yes

No

*If yes, please fill out the table below:*

Commenter	Comment	Agency's Response
NA	NA	NA

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

**ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM**

Article 1, Tuberculosis Control Program, was made effective June 30, 2012. The Department prepared an Economic Impact Statement for that rulemaking. The following table updates the economic impact provided in that statement.

Description	2012 Rulemaking	Actual Impact
<b>Costs and benefits to state agencies directly affected by the rulemaking</b>	In Fiscal Year (FY) 2011, 12 individuals received Tuberculosis Control payments. The FAA issued \$6,144.78 in Tuberculosis Control payments in FY 2011. The Department does not anticipate any new full-time employees as a result of this rulemaking.  This program has minimal economic impact on political subdivisions, limited to the benefit of minimizing exposure to suspected or confirmed communicable tuberculosis.	In Fiscal Year (FY) 2018, 15 individuals received Tuberculosis Control payments. The FAA issued \$8,500 in Tuberculosis Control payments in FY 2018. No new full-time employees have resulted from the rules.



ARTICLE 8. SHORT-TERM CRISIS SERVICES

Article 8, Short-term Crisis Services, was adopted under an exemption from Title 41, Chapter 6, effective August 4, 1997, and no economic impact statement was prepared at that time. This economic impact assessment reflects the current economic impact for these rules.

**Case/Client Data:** In SFY 2018, the Department's Short-term Crisis Services served 1,755 households through the provision of temporary assistance to low-income families experiencing an emergency need that could not be met immediately by their own income. Contracted providers are responsible for obtaining documentation to determine eligibility, authorizing payments, and assisting the client to secure services that will alleviate the crisis. There is no additional cost or economic benefit and no other private persons or consumers are directly affected by these rules.

**Agency Data:** These rules do not increase the cost or burden on the Department.

**Funding:** Federal funding is used to operate Short-term Crisis Services. The Department has received \$3.724 million in TANF funds to support the program during SFY 2019. These funds are allocated to Arizona's 11 Community Action Agencies and one Limited Purpose Agency to administer the program. There are no additional costs associated with these rules.

**9. Has the agency received any business competitiveness analyses of the rules?** Yes  No

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

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM

No actions were planned relative to Article 1.

ARTICLE 8. SHORT-TERM CRISIS SERVICES

No. The Department intended to amend Article 8 to eliminate the face-to-face interview after the December 2014 expiration of the regulatory moratorium. Subsequent regulatory moratoria which have been in place since December 2014 impacted the Department's rulemaking and the Department has not made amendments to Article 8.

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

With the amendments identified 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.

The Department believes that the probable benefits of the rules will outweigh within this state the probable costs of the rules.

- 12. Are the rules more stringent than corresponding federal laws?**      Yes       No

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of the federal law(s)?*

ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM

There is no corresponding federal law specific to Article 1.

## ARTICLE 8. SHORT-TERM CRISIS SERVICES

The Department has determined that the rules contained in Article 8 are more stringent than corresponding TANF regulations only in that these rules require a face-to-face interview. TANF regulations outlined in 45 CFR Chapter II do not specifically address interview requirements.

- 13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that A.R.S. § 41-1037 does not apply to the rules in Chapter 13 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.

- 14. Proposed course of action:**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

## ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM

In the interest of providing clarity and consistency to stakeholders, program participants and community partners, the Department is pursuing a rulemaking to outline the appellate process for all administrative hearings conducted by the Appellate Services Administration for programs administered by the Department. These rules will consolidate the various separate appeals rules contained in many of the specific Department program rules. The proposed rulemaking could eliminate separate hearing rules sections for more than 15 existing chapters under Title 6.

In September 2018, the Governor's Office approved an exception from the regulatory moratorium to allow the Department to proceed with a rulemaking to consolidate various Department appeal and hearing rules. The Department plans to submit a Notice of Final Rulemaking for the combined rules to Council in June 2020. Actions to repeal or revise rules in Chapter 13 will be identified as the language for the combined appeal and hearing rules are solidified.

## ARTICLE 8. SHORT-TERM CRISIS SERVICES

The Department is reassessing the potential for completing a rulemaking to address the items identified above with respect to Article 8 in the context of competing rulemaking priorities and the constraints of the regulatory moratorium. If the Department receives an exception from the moratorium, the Department anticipates submitting amended rules to Council within 20 months of receiving the exception.

**ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM****R6-13-101. Reserved****R6-13-102. Definitions**

The following definitions apply to this Chapter:

1. “Administration” means the Family Assistance Administration of the Department.
2. “Adverse action” means that the Department has:
  - a. Denied an application for assistance,
  - b. Failed to take action to approve or deny an application within 30 days of the application file date,
  - c. Terminated or reduced assistance,
  - d. Determined that it overpaid a Tuberculosis Control (TC) payment recipient, or
  - e. Denied a request for a waiver of an overpayment.
3. “Applicant” means a person who has directly or through a representative filed an application for TC payments with the Department.
4. “Assistance unit” means a group of persons whose needs, income, resources, and other circumstances the Department considers as a whole for the purpose of determining eligibility and benefit amount for Tuberculosis Control payments.
5. “CA” or “Cash Assistance” means temporary assistance for needy families paid to a recipient for the purpose of meeting basic living expenses under A.R.S. § 46-291 et seq.
6. “Collateral verification” means the use of an agency, organization, or qualified individual who has knowledge of the requested eligibility information, and who the Department may use as a collateral contact when requested to do so or when documented verification is not available to the applicant.
7. “Countable income” means income from every source minus income excluded under R6-13-118.
8. “Department” means the Arizona Department of Economic Security.
9. “FAA” or “Family Assistance Administration” means the administration within the Department’s Division of Benefits and Medical Eligibility responsible for providing financial and nutrition assistance to eligible persons and determining eligibility for medical assistance.
10. “FAA Manual” means the policies and procedures used to determine an assistance unit’s eligibility for TC payments.
11. “Homestead property” has the same meaning as A.R.S. § 46-101(14).
12. “In-kind income” means the value of goods or services received for work in lieu of the receipt of wages.
13. “Legal claim for support or care” means that the recipient has a duty under the law to look after or provide financially for the person with the legal claim for support or care.
14. “Lump-sum payment” means a single payment, such as retroactive monthly Social Security or other benefits, nonrecurring pay adjustments or bonuses, inheritances, lottery winnings, or personal injury and workers’ compensation awards.
15. “Notice of adverse action” means a written notice sent to a recipient when the Department takes adverse action under R6-13-141.
16. “Office of Appeals” means the Department’s independent, quasi-judicial, administrative hearing body that includes hearing officers appointed under A.R.S. § 41-1992(A).
17. “Recipient” means a person who receives TC payments.
18. “Resources” means the assistance unit’s real and personal property and liquid assets.
19. “TC” means Tuberculosis Control, a program administered by the Department that provides monetary assistance to an assistance unit that includes an adult who is certified by the state Tuberculosis Control Officer to have active tuberculosis or suspected tuberculosis, and that satisfies the eligibility requirements in this Article.
20. “Vendor payment” means a payment from a person or organization that is not a member of an assistance unit to a third party to cover an assistance unit’s expenses.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-103. Individuals Who May Qualify for Assistance**

- A.** The following persons are eligible for TC payments only if they meet all financial and nonfinancial eligibility requirements:
1. An adult who is certified by the state Tuberculosis Control Officer to have active tuberculosis or suspected tuberculosis,
  2. Any person residing with the adult who has a legal claim for support or care from the adult, including:
    - a. The adult’s spouse; and
    - b. A minor child. Also, a child age 18 if attending a secondary school or a high school equivalency program;
    - c. A mentally or physically disabled child more than age 18; and
    - d. A child who is temporarily absent from the home because the child is attending school, as long as the child returns home at least once a year.
- B.** A person may receive TC payments only if the individual is not eligible to receive Cash Assistance under A.R.S. Title 46, Chapter 2, Article 5.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-104. Applicant Responsibilities at Initial Application**

- A.** A person shall apply for TC payments by submitting an identifiable Department-approved application to an FAA office in person, by mail, fax, or electronic transmittal.
- B.** An identifiable application means an application that contains:
1. The legible name and address of the applicant; and
  2. The signature of the applicant, the applicant’s representative, or if the applicant is incompetent or incapacitated, someone legally authorized to act on behalf of the applicant.
- C.** The application filing date is the date an FAA office receives an identifiable application. If the applicant is eligible, the Department shall pay TC payments calculated from this date.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-105. Department Responsibilities at Initial Application**

- A.** Upon receipt of an identifiable application, the Department shall:
1. Date stamp the application with the application filing date, and
  2. Schedule an initial eligibility interview with the applicant at:

- a. A location that ensures a reasonable amount of privacy, or
  - b. A homebound applicant's residence, or
3. Schedule a telephone initial eligibility interview.
- B.** The Department shall assist the applicant in completing the application if necessary. A completed application shall contain:
1. The names of all persons living in the applicant's dwelling and their relationship to the applicant,
  2. A request to receive TC payments, and
  3. All financial and nonfinancial eligibility information requested on the application form.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-106. Applicant Responsibilities at the Initial Interview**

- A.** The applicant shall attend the interview. A person of the applicant's choosing may also attend and participate in the interview with the applicant.
- B.** Missed appointments.
1. If the applicant misses a scheduled appointment for an interview, the applicant shall:
    - a. Request to reschedule the interview no later than close of business on the day of the missed appointment, and
    - b. Attend the second scheduled appointment.
  2. If the applicant fails to comply with the requirements in subsection (B)(1)(a) or (b) without good cause, the Department shall deny the application, and the applicant shall reapply in order to receive TC payments. Good cause for failure to comply with the requirements in subsection (B)(1)(a) or (b) is any unanticipated occurrence that, in the discretion of the Department, made it impossible or unreasonable for the applicant to attend the interview or contact the local office.
- C.** An applicant for assistance shall:
1. Give the Department complete and truthful information;
  2. Inform the Department of all changes in income, assets, or other circumstances affecting eligibility that occur after the date of application for TC payments;
  3. Comply with Electronic Benefit Transfer (EBT) requirements; and
  4. Comply with any other procedural requirements contained in this Chapter or in state or federal law.
- D.** An applicant shall provide required verification of financial and nonfinancial eligibility information or request assistance from the Department in obtaining the information.
1. An applicant shall provide the Department with all requested verification of financial and nonfinancial eligibility factors, or request the Department's assistance in obtaining the requested verification, within 10 calendar days from the date of a written request for such information.
  2. An applicant shall provide the Department with verification of financial and nonfinancial eligibility factors by submitting to the Department:
    - a. Documents originating from an agency, organization, or individual qualified to have knowledge of the provided information; or
    - b. When documents required in subsection (D)(2)(a) are not available to the applicant, the name, telephone number, and address of an agency, organization, or individual qualified to have knowledge of

- the requested eligibility information that the Department may use as a collateral contact; or
- c. When the items in subsections (D)(2)(a) and (b) are not available, a signed written statement from the applicant that describes facts specific to an eligibility factor. The Department shall not accept an applicant's signed written statement as acceptable verification of identity, relationship of household members, or expenses.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-107. Agency Responsibilities at the Initial Interview**

- A.** During the initial interview, a Department representative shall:
1. Discuss how the applicant and the other assistance unit members previously met their needs and why they now need financial assistance;
  2. Provide the applicant with written information explaining:
    - a. The terms, conditions, and obligations of the TC program;
    - b. Any additional required verification information that the Department requires the applicant to provide in order to conclude the eligibility evaluation;
    - c. The Department's practice of exchanging eligibility and income information through the State Verification and Exchange System (SVES);
    - d. The coverage and scope of the TC program;
    - e. Related services that may be available to the applicant;
    - f. The applicant's rights, including the right to appeal adverse action;
    - g. The requirement to report all changes, as specified in R6-13-138, within 10 calendar days from the date the change becomes known; and
    - h. Other benefits for which any person in the assistance unit is potentially eligible and the requirement that any person in the assistance unit apply for and, if eligible, accept those other benefits;
  3. Inform the applicant that the Department shall assist the applicant in obtaining required verification at the request of the applicant, when the verification provided by the applicant is insufficient to complete an eligibility determination, or when the required verification is difficult or impossible for the applicant to obtain;
  4. Review the penalties for perjury and fraud, as printed on the application;
  5. Review any verification information provided with the application or at the initial interview;
  6. Review all ongoing reporting requirements and the potential consequences for failure to make timely reports, including overpayment liability; and
  7. Offer an applicant who is a United States citizen the opportunity to register to vote and provide the applicant with a voter registration form if requested.
- B.** The Department shall obtain independent verification or corroboration of information provided by the applicant when required by law, or when necessary to determine eligibility or benefit level.
- C.** The Department may verify or corroborate information by any reasonable means, including:
1. Contacting third parties, such as employers;
  2. Asking the applicant to provide documented verification, such as billing statements or pay stubs;

3. Asking the applicant to provide a signed written statement that describes facts specific to an eligibility factor when documented or collateral verification is not available;
4. Conducting a computer data match through SVES; and
5. Referring a case to the Department's Office of Special Investigations (OSI) for investigation when:
  - a. The Department has a valid reason to suspect that an act has been committed for the purpose of deception, misrepresentation, or concealment of information relevant to a determination of eligibility or the amount of a benefit payment; or
  - b. The Department has a valid reason to suspect the commission of theft or fraud related to TC eligibility or payments, or any conduct listed in A.R.S. § 46-215.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

#### R6-13-108. Processing the Initial Application

- A. The Department shall complete the eligibility determination and benefit level computation within 30 calendar days of the initial application filing date, unless:
  1. The applicant withdraws the application. An applicant may withdraw an application at any time before the Department completes an eligibility determination by requesting the withdrawal from the Department either verbally or in writing.
    - a. If an applicant verbally requests to withdraw an application, the Department shall:
      - i. Document the names of individuals and the types of benefits or services from which the applicant wishes to withdraw, and
      - ii. Deny the application and notify the applicant.
    - b. A withdrawal is effective as of the date of initial application.
    - c. When an applicant withdraws an application, an applicant may file a new application to request TC payments.
  2. The applicant dies. If an applicant dies while the application is pending, the Department shall deny the application.
  3. The Department is aware of a delay in receiving verification of a required eligibility factor. In this case, the Department shall assist the applicant in obtaining the required verification, even if the delay extends beyond 30 days.
- B. The Department shall deny an application and send the applicant a written notice of denial that shall include an explanation of appeal rights when the applicant fails to:
  1. Complete the application under R6-13-105(B);
  2. Complete an eligibility interview under R6-13-106;
  3. Cooperate with all required Department procedures without good cause; however, the Department shall not deny the application for this reason unless the Department has advised the applicant of these procedural requirements in writing;
  4. Meet all of the mandatory financial and nonfinancial eligibility criteria used to establish eligibility for the TC program; or
  5. Meet the verification requirements in R6-13-106(D).

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

#### R6-13-109. Case Record

- A. The case record shall contain all data collected or used by the Department in evaluating and determining eligibility and benefit amount.
- B. The Department shall maintain a case record for every TC applicant or recipient. The case record shall include all documents maintained or stored in any format.
- C. Except as otherwise provided in subsections (D) and (E), the Department shall retain the case record for a period of three years after the last date the Department denied TC assistance to an applicant or terminated TC assistance to a recipient.
- D. The Department shall retain a case record that contains an unpaid overpayment until:
  1. The overpayment is paid back in full, or
  2. The Department no longer requires the assistance unit to repay the overpayment.
- E. The Department shall retain a case record that includes a disqualification imposed under A.R.S. § 13-3418, an Intentional Program Violation (IPV), or any other disqualification or sanction that prohibits the receipt of assistance.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

#### R6-13-110. Confidentiality

The Department shall maintain the confidentiality of a TC applicant's or recipient's records and limit the release of safeguarded information to the Department of Health Services and as prescribed under 6 A.A.C. 12, Article 1 and 9 A.A.C. 6, Article 1.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

#### R6-13-111. Manuals

The Department shall make the FAA Manual, as defined in R6-13-102, available to the public on the Department's web site, and each FAA office shall make the FAA Manual accessible for public inspection during regular business hours.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

#### R6-13-112. Nonfinancial Eligibility Determination

- A. Age. An applicant for TC payments shall be at least 18 years of age.
- B. Identity. An applicant for TC payments shall provide the Department with verification that reasonably establishes the applicant's identity.
  1. Verification that reasonably establishes identity includes:
    - a. A driver license or state-issued identification card that contains a photo of the applicant;
    - b. Documents such as the applicant's birth certificate, school identification card, citizenship and immigration documents, identification card from health benefits or other social service programs, wage stubs, work identification card, voter registration card, or other similar documents; or
    - c. Collateral verification, as defined at R6-13-102, from an individual who shall not benefit from the applicant's receipt of TC payments.
  2. An applicant's written statement is not sufficient verification of identity.
- C. Tuberculosis Certification. An applicant must be certified by the state Tuberculosis Control Officer to have active or suspected tuberculosis.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-113. Resource Limitations**

- A.** An applicant is not eligible for TC payments if the applicant has resources in excess of the following, after applying the exclusions in subsection (B):
1. \$1000 for an assistance unit consisting of only the applicant.
  2. \$1400 for an assistance unit consisting of the applicant and the applicant's spouse.
- B.** The Department shall exclude the equity value of the resources listed below:
1. The homestead property of the assistance unit, as defined in R6-13-102, not to exceed a current equity of \$50,000;
  2. Household furnishings that the assistance unit members use in their residence and personal effects essential for day-to-day living;
  3. The current equity value up to \$1500 of one vehicle in the assistance unit. When two or more vehicles are owned, the Department shall apply the exclusion to the vehicle with the highest equity value. Jointly owned vehicles with ownership records containing the word "or" between the owners' names are available in full to each owner unless it can be proven by the assistance unit member that the vehicle is not available to him or her or not in the assistance unit member's possession. When more than one owner is a member of an assistance unit, the equity value of the resource is counted only once;
  4. Funds established in connection with settling liability claims concerning Agent Orange death or disability; and
  5. Any other resource specifically excluded by law.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-114. Resource Verification**

The Department shall verify all resources.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-115. Availability and Ownership of Resources**

- A.** The Department shall consider a resource as countable to the assistance unit only when the resource is legally and physically available or in the possession of the assistance unit member.
- B.** The Department shall consider the availability of property to the assistance unit based on the type of ownership.
1. The sole and separate property of one spouse is available to the other spouse only when the spouse/owner makes the property available. A resource shall be considered sole and separate property only when obtained in one of the following ways:
    - a. Before the present marriage, or
    - b. At any time by gift or inheritance.
  2. Jointly owned resources with ownership records containing the words "and" or "and/or" between the owners' names are deemed available when all owners can be located and consent to disposal of the resource, except that such consent is not required when all owners are members of the assistance unit.
- C.** The Department considers the following resources unavailable to the assistance unit:

1. Any resource owned solely by a spouse who is receiving Supplemental Security Income (SSI) paid by Title XVI of the Social Security Act.
2. Resources disputed in divorce proceedings or in probate matters.
3. Real property situated on a Native American reservation.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-116. Nonrecurring Lump-sum Payments**

- A.** The Department shall count nonrecurring lump-sum payments, as defined in R6-13-102, as a resource in the month received.
- B.** The Department shall count any part of a lump-sum payment that recurs in future months as income in the month received.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-117. Treatment of Income; Overview**

- A.** "Income" shall include the following when actually received by the assistance unit:
1. Gross earned wages from public or private employment before any deductions;
  2. In-kind income, as defined in R6-13-102;
  3. For self-employed persons, the sum of gross business receipts minus business expenses;
  4. Unearned monetary gains such as benefits or assistance grants, minus any deductions to repay prior overpayments or attorney fees; and
  5. A prorated share of any Cash Assistance program benefit received by the applicant's spouse.
- B.** In determining eligibility, the Department shall consider all gross income available to the assistance unit, except those types of income excluded under R6-13-118.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-118. Income Exclusions**

The Department shall not count the types of income in this Section when determining the income available to an assistance unit.

1. One-half of the countable income of the applicant's spouse;
2. One-half of the prorated share of any Cash Assistance program benefit received by the applicant's spouse;
3. Loans;
4. Educational grants or scholarships;
5. Income tax refunds;
6. The value of Nutrition Assistance (NA) program benefits and benefits from the Special Supplemental Food Program for Women, Infants, and Children (WIC);
7. Energy assistance payments or allowances provided under any federal, state, or local law, including Negative Rent Utility Payments issued by the Department of Housing and Urban Development for the purpose of energy assistance;
8. Vendor payments, as defined in R6-13-102;
9. Vocational rehabilitation program payments made as reimbursements for training-related expenses, subsistence and maintenance allowances, and incentive payments that are not intended as wages;
10. Agent Orange payments;
11. Burial benefits that are dispersed solely for burial expenses;

12. Reimbursements for work-related expenses that do not exceed the actual expense amount;
13. Insurance payments issued to repay a specific bill, debt, or estimate that cannot be used to meet basic daily needs such as housing, food, or other personal expenses;
14. Attorney fees that are included in the gross payment of industrial compensation paid under the workers' compensation law or in legal settlements;
15. In-kind income, as defined in R6-13-102;
16. Earned income received from employment through the Workforce Investment Act (WIA), including earnings received from on-the-job-training; and
17. Any other income specifically excluded by applicable state or federal law.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-119. Determining Income Eligibility and a Cash Benefit Amount for an Assistance Unit**

- A. To determine the countable monthly income of an assistance unit, the Department shall:
  1. Calculate a countable monthly gross income amount using the methods listed in R6-13-120, and
  2. Calculate a countable monthly net income by subtracting the applicable earned income deduction in R6-13-123 from the countable monthly gross income.
- B. The Department shall determine the cash benefit amount by subtracting the countable monthly net income from the TC Payment Standard for the number of eligible TC recipients in the assistance unit as prescribed in R6-13-124.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-120. Determining Monthly Gross Income**

- A. The Department shall calculate an assistance unit's countable monthly gross income by converting countable income received other than monthly into a monthly amount using the methods in R6-13-121.
- B. The Department shall include in its calculation all gross income from every source available to the assistance unit as provided in R6-13-117, unless specifically excluded in R6-13-118 or by federal or state law.
- C. The Department shall include in its calculation income that the assistance unit has received and reasonably expects to receive in a benefit month and that is based on the Department's reasonable expectation and knowledge of the assistance unit's current, past, and anticipated future circumstances.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-121. Methods to Determine Monthly Income**

- A. The Department shall convert income received in a regular amount on an ongoing basis into a monthly amount as follows:
  1. Multiply weekly amounts by 4.3,
  2. Multiply biweekly amounts by 2.15,
  3. Multiply semimonthly amounts by 2,
  4. Divide quarterly amounts by 3,
  5. Divide semiannual amounts by 6, and
  6. Divide annual amounts by 12.
- B. Averaging income.
  1. The Department shall average income for an assistance unit that receives income:
    - a. Irregularly; or

- b. Regularly, but from sources or in amounts that vary.
2. When using this method, the Department shall add together income from a representative number of weeks or months and then divide the resulting sum by the same number of weeks or months.

**C. Prorating income.**

1. Except as provided in subsection (C)(2), the Department shall prorate income when an assistance unit receives income from a fixed-term employment contract in the following manner:
  - a. Income is prorated over the number of months the contract is intended to cover, unless the contract specifies piecemeal or hourly income.
  - b. Applicable earned income disregards apply as if the assistance unit received the prorated amounts in each month of the contract.
2. The Department shall count income in the month received using the income conversion methods in subsections (A) and (B) when the contract specifies that the assistance unit will receive income on a piecemeal or an hourly basis.

**D. Actual income. The Department shall use the actual income of an assistance unit that:**

1. Receives or reasonably expects to receive less than a full month's income from a new source,
2. Receives or reasonably expects to receive less than a full month's income from a terminated source of income, or
3. Is paid daily.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-122. Income Verification**

The Department shall verify all income as provided in R6-13-107 before determining eligibility and benefit amount.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-123. Earned Income Deduction**

For the purpose of determining the countable monthly net income in R6-13-119(A)(2) and for use in the TC Payment Standard Test as provided in R6-13-124, the Department shall deduct a \$24 work expense deduction from the countable monthly earned income of each employed person in the assistance unit.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-124. Determining Income Eligibility and Cash Benefit Amount**

- A. To determine income eligibility for a TC cash benefit, the Department shall:
  1. Establish whether to use an A-1 Standard or an A-2 Standard shelter cost factor to complete the financial determination.
    - a. The Department shall use the A-1 Standard when:
      - i. The assistance unit pays, or has an obligation to pay, all or part of the shelter costs for the place in which assistance unit members reside. Shelter costs include rent, mortgage, and property taxes;
      - ii. The assistance unit members reside in subsidized public housing; or
      - iii. A member of the assistance unit works in exchange for rent.

- b. The Department shall use the A-2 Standard:
  - i. For all circumstances not covered under subsection (A)(1)(a), or
  - ii. When an organization or a person who is not a member of the assistance unit pays shelter costs for three consecutive months or longer.
- 2. Conduct a TC Payment Standard Test.
  - a. Using the size of the assistance unit and the applicable A-1 or A-2 Standard, the Department shall compare the countable monthly net income to the applicable maximum TC cash benefit amount shown on the TC Payment Standard chart in subsection (A)(3).
  - b. If the countable monthly net income is at least one dollar less than the TC maximum cash benefit amount, the household is eligible for TC benefits. If the countable monthly net income is equal to or greater than the TC maximum cash benefit amount, the assistance unit is ineligible for TC benefits.
- 3. The TC Payment Standard Chart.

Number of Individuals	Maximum Monthly TC Cash Benefit For A-1 Standard (Based on 0 Countable Income)	Maximum Monthly TC Cash Benefit For A-2 Standard (Based on 0 Countable Income)
1	\$173	\$108
2	\$233	\$145
3	\$293	\$183
4	\$353	\$220
5	\$412	\$258
6	\$472	\$295
Each additional	\$60	\$38

- B. To determine the amount of the cash benefit payment:
  - 1. The Department shall deduct the countable monthly net income from the maximum cash benefit amount, as shown in the chart in subsection (A)(3), and round the difference down to the next whole dollar. The Department shall pay that amount to the assistance unit.
  - 2. The Department shall prorate the initial month's benefits by the number of days remaining in the month from the application filing date.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-125. Benefit Payments**

- A. The Department shall pay benefits to an assistance unit for each month in which the Department determines it to be eligible.
- B. The Department shall make benefits available no later than the 30th day following the date of application for the initial month, and on the first day of each month for which the assistance unit is eligible thereafter.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-126. Payment Method**

The Department shall provide benefit payments by making direct deposits into:

- 1. An Electronic Benefit Transfer (EBT) account established for the assistance unit by the Department, or

- 2. A financial institution account established by the recipient.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-127. EBT Card Issuance**

- A. The Department shall authorize access to an EBT account to:
  - 1. The recipient; or
  - 2. An EBT Alternate Card Holder, as provided in R6-13-128.
- B. The Department shall:
  - 1. Provide the recipient with a brochure that explains EBT usage,
  - 2. Inform the recipient that the EBT card will be issued to the recipient by mail,
  - 3. Provide the recipient with the EBT provider's Customer Service Hotline telephone number in order for the recipient to obtain a Personal Identification Number (PIN) and to report EBT account problems, and
  - 4. Inform the recipient about the availability of TC Direct Deposit into an open banking account and the process for establishing Direct Deposit.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-128. EBT Alternate Card Holder**

A recipient may designate up to two EBT Alternate Card Holders who shall have full access to the TC benefit available in the EBT account. The EBT Alternate Card Holder shall:

- 1. Receive his or her own EBT card by mail, and
- 2. Contact the EBT provider's Customer Service Hotline telephone number in order to obtain a Personal Identification Number (PIN).

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-129. Change in Arizona Residency**

When an assistance unit moves to another state, it is entitled to any benefits remaining in its EBT account. The assistance unit may obtain benefits by accessing the account with the EBT card before leaving Arizona or at an Automated Teller Machine (ATM) displaying the QUEST symbol in the assistance unit's new state of residence.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-130. Replacing Lost, Stolen, or Damaged Cards**

The assistance unit shall report a lost, stolen, or damaged EBT account access card as soon as possible, either by telephone to the EBT 24-hour Customer Service Hotline or to the Department during normal business hours.

- 1. Any funds removed from an EBT account prior to the assistance unit's reporting the card as lost or stolen will not be replaced.
- 2. When the client reports a lost, stolen, or damaged EBT account access card by telephone to the EBT 24-hour Customer Service Department, the EBT 24-hour Customer Service Department shall deactivate the EBT account access card and shall issue a new card by mail.
- 3. The Department shall issue a replacement card when the recipient reports having not received a new EBT account access card by mail by the close of business on the fourth

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workday following the date the recipient requested a replacement card from the EBT 24-hour Customer Service Department.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-131. Inactive Accounts; Unused Benefits**

The assistance unit shall retain the right to access the EBT account for one year from the original date of benefit availability, regardless of the status of the TC case.

1. If the assistance unit does not access an EBT account for 60 days, the Department shall notify the assistance unit in writing. The notice shall state that immediate access to the EBT account will terminate in 30 days unless the assistance unit contacts the Department or accesses the EBT account.
2. The assistance unit shall lose immediate access to any benefits in an EBT account that has been inactive for 90 days. To regain access to these benefits, the assistance unit shall contact the Department and request that it reinstate the assistance unit to the EBT account.
3. If the assistance unit has not accessed benefit payments in an EBT account for 365 days after the original date of availability, the Department shall recoup the benefits, and the assistance unit shall lose all rights to regain those benefits.
4. Upon the death of a TC payment recipient, the Department shall recoup from the EBT account any TC payments paid to the recipient after the month of the recipient's death.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-132. Supplemental Payments**

- A. The Department shall correct underpayments of TC assistance by issuing the assistance unit a supplemental payment regardless of whether the underpaid individual is eligible on the date the supplemental payment is issued.
- B. The Department shall not count such supplemental payments as a resource or as income.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-133. Overpayments: Date of Discovery; Collection**

An overpayment exists when an assistance unit receives a TC payment that exceeds the amount the assistance unit was eligible to receive.

1. The Department shall pursue collection of all overpayments under A.R.S. § 46-213.
2. The Department shall send the recipient a notice of overpayment within 90 days of the date of discovery. The date of discovery is the date the FAA has all of the information necessary to accurately calculate a potential overpayment and writes an overpayment report to the Department's Office of Accounts Receivable and Collections (OARC).
3. If the FAA suspects that fraudulent activity caused the overpayment, the FAA shall refer the potential overpayment to the Department's Office of Special Investigations (OSI) for further investigation and potential prosecution. The overpayment report may be delayed pending the outcome of the OSI investigation.

4. The Department's failure to comply with the time-frame in subsection (2) shall not affect the validity or collection of the overpayment.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-134. Methods of Collection and Recoupment**

A. When an overpaid assistance unit is currently receiving benefits, the Department shall seek recovery using one or more of the following repayment methods:

1. Offset against any amounts underpaid to the assistance unit and due in the current month;
2. Cash payments;
3. Reduction in current benefits in an amount not to exceed 10% of the assistance unit's monthly payment, unless the assistance unit desires a larger reduction; or
4. A combination of the above methods.

B. If the assistance unit is not receiving benefits, the Department shall pursue recovery by appropriate action under state law.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-135. Overpayment Calculation Date**

When determining an overpayment amount, an assistance unit's overpayment period begins in one of the following:

1. The benefit month for which an initial TC payment is issued, when the assistance unit was ineligible for the amount of assistance paid; or
2. The first day of the second month following the month in which a change that caused the overpayment of the TC payment occurred.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-136. Completion of Treatment**

When the Department of Health Services notifies the FAA that an individual receiving TC payments has completed treatment for active or suspected tuberculosis, that individual is no longer eligible for TC payments.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-137. Eligibility Review**

A. The Department shall complete a review of all eligibility factors for each assistance unit at least once every six months. The first eligibility review shall begin in the fifth month following the first month of TC eligibility.

B. The Department shall mail, or otherwise transmit as provided by law, the recipient a notice 30 days prior to the Department's review date advising the recipient of the need for a review. The recipient shall file an application and complete a review interview by the date specified on the notice.

C. The Department shall schedule and conduct a review interview in the same manner as an initial interview, described in R6-13-106.

D. The Department shall verify the assistance unit's resources and income and any eligibility factors that have changed or are subject to change. The Department shall also verify with the state Tuberculosis Control Officer that the individual continues to have active or suspected tuberculosis and that the individual continues to receive treatment for that condition. The

Department may verify other factors if current verification is not in the case file.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-138. Requirement to Report Changes**

- A.** The assistance unit shall report, verbally or in writing, all changes that have the potential to affect eligibility or the benefit amount within 10 days from the date the change becomes known. This includes changes to any of the following:
1. Residential address;
  2. Shelter expenses to establish the applicable A-1 or A-2 shelter cost factor used to complete the financial eligibility determination, described in R6-13-124;
  3. Sources and amounts of income, financial assistance, or any other assistance that provides help to the assistance unit members in meeting their needs;
  4. Disability and employability status of the TC payment recipient;
  5. Approval or denial of federal disability benefits by the Social Security Administration;
  6. Individuals residing in the home; and
  7. Types, sources, and amounts of resources.
- B.** The assistance unit shall provide any verification of changes requested in writing by the Department on or before the verification due date specified on the Department's request for verification, using the verification methods prescribed in R6-13-106.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-139. Agency Responsibilities for Processing Changes**

- A.** The Department shall redetermine eligibility for TC benefits and, if applicable, recalculate a TC benefit amount when the assistance unit reports a change directly to the Department, when someone acting on behalf of the assistance unit reports a change, or if an automated system report reveals a change.
- B.** When a change results in either a decrease in the cash benefit or renders the assistance unit ineligible for TC payments, the Department shall effect the change within 10 days from the date the change was reported, when possible, using one of the following methods:
1. Reduce the benefit or terminate eligibility for the first possible month allowing time for notice of adverse action requirements prescribed in R6-13-141, without further verification, if there is sufficient and reliable information to effect the change; or
  2. Attempt to obtain verification by the 10th day from the date the change was reported when there is not sufficient information to effect the change without additional verification. The Department shall:
    - a. Send the assistance unit a written request for verification with a due date that is the 10th day from the date the verification is requested; and
    - b. Contact third parties to obtain the needed verification, when possible.
- C.** If the assistance unit fails to provide the requested verification by the due date and does not request assistance from the Department to obtain the verification, the Department shall terminate TC payments for the first possible month, allowing time for notice of adverse action requirements prescribed in R6-13-141.
- D.** When a reported change results in an increase in the cash benefit, the Department shall effect the increase only after the

change has been verified. The Department shall send the assistance unit a written request for verification with a due date that is 10 days from the date the Department mails the written request, or otherwise transmits the written request as provided by law.

1. When the assistance unit provides the requested verification on or before the due date, the Department shall increase the cash benefit for the first monthly payment issued after the date the change is reported.
2. When the assistance unit provides the requested verification after the due date, the Department shall increase the cash benefit for the first monthly payment issued after the date the verification is received.
3. When the assistance unit does not provide the requested verification, the Department shall not increase the cash benefit but shall continue issuing the current cash benefit amount.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-140. Reinstatement of Terminated Benefits**

- A.** The Department shall reinstate terminated benefit payments within 10 calendar days when:
1. The Department terminated benefit payments in error,
  2. The Department receives a court order or administrative hearing decision mandating reinstatement, or
  3. The recipient timely files a request for fair hearing and requests continued benefits as provided in R6-13-146.
- B.** When a six-month review under R6-13-137 was not completed due to the termination of benefits, the Department shall conduct the review at the earliest opportunity following reinstatement.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-141. Notice of Adverse Action**

- A.** A notice of adverse action shall contain:
1. The adverse action taken,
  2. The reason for the adverse action,
  3. The effective date of the adverse action,
  4. The name and telephone number of the Administration office to contact for additional information,
  5. The telephone number for free legal assistance, and
  6. The recipient's appeal rights.
- B.** Timely Notice of Adverse Action.
1. When the Department intends to reduce or terminate benefits, the Department shall provide the assistance unit with a timely notice of adverse action under this subsection, unless the reduction or termination is for one of the reasons in subsection (C).
  2. The Department shall mail the notice of adverse action by first-class mail, postage prepaid, or otherwise transmit the notice as provided by law, to the last known residential address for the assistance unit or other designated address for the assistance unit so that the Department can reasonably expect the assistance unit to receive the notice at least 10 days prior to the first day of the month in which the reduction or termination of benefits shall occur.
- C.** The Department may dispense with timely notice, but shall mail, first-class, postage prepaid, or otherwise transmit as provided by law, the notice of adverse action to the last known residential address for the assistance unit or other designated address for the assistance unit, so that the Department can reasonably expect the assistance unit to receive the notice no later

than the first day of the month in which the reduction or termination of benefits shall occur, when:

1. A recipient makes a written or verbal request for termination,
2. A recipient is ineligible because of admission to a facility where the recipient's needs are being met. This includes:
  - a. Incarceration,
  - b. Long-term hospitalization when the recipient is not expected to return to the home, and
  - c. Institutionalization in a skilled nursing care or intermediate care facility,
3. The recipient's address is unknown,
4. The Department has verified that another state has accepted the recipient for assistance, or
5. An administrative tribunal or court of law has found that the recipient committed an Intentional Program Violation (IPV).

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

#### R6-13-142. Entitlement to a Hearing; Appealable Action

- A. An applicant or recipient who appeals an adverse action is entitled to request an administrative hearing to challenge the action as provided in this Article.
- B. An adverse action resulting from a uniform change in federal or state law is not appealable unless the Department misapplies the law to the person seeking the hearing.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

#### R6-13-143. Computation of Time

- A. In computing any time period:
  1. "Day" means a calendar day;
  2. "Workday" means Monday through Friday, excluding Arizona state holidays;
  3. The Department does not count the date of the act, event, notice, or default from which a designated time period begins to run as part of the time period; and
  4. The Department counts the last day of the designated time period unless it is a Saturday, Sunday, or Arizona state holiday.
- B. The Department deems a document that the Department mailed as given to the addressee on the date mailed, or otherwise transmitted as provided by law, to the addressee's last known address. The Department presumes that the mailing date is the date shown on the document unless the facts show otherwise.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

#### R6-13-144. Request for Hearing: Form; Time Limits; Presumptions

- A. A person who wishes to appeal an adverse action shall make a verbal or written request for a hearing to the FAA within 30 days of the date on the notice or letter advising the person of the adverse action. The FAA shall provide a form for this purpose and, upon request, shall help an appellant complete the form. If the person makes a verbal request for hearing, the FAA shall reduce the appeal and the stated reasons for the appeal to writing, record the date of the verbal request, and forward the request to the Office of Appeals.
- B. An appellant shall include the following information in the request for hearing:
  1. Name, address, and telephone number of the individual subject to the adverse action;
  2. A description of the adverse action that is the subject of the appeal;
  3. The date of the notice of adverse action; and
  4. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.

1. Name, address, and telephone number of the individual subject to the adverse action;
  2. A description of the adverse action that is the subject of the appeal;
  3. The date of the notice of adverse action; and
  4. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.
- C. The Department shall process an appeal even if the request does not include all the information listed in subsection (B), as long as the request contains sufficient information for the Department to determine the identity of the appellant.
  - D. The Department deems a request for hearing filed on:
    1. The mailing date as shown by the postmark if the appellant sent the request by first-class mail, postage prepaid, through the United States Postal Service to the Department; or
    2. The date the Department actually receives the request, if not mailed as provided in subsection (D)(1).
  - E. A document is timely filed if the sender of the document can demonstrate that any delay in submission was due to any of the following reasons:
    1. Department error or misinformation,
    2. Delay or other action by the United States Postal Service, or
    3. Delay due to the appellant's changing mailing addresses at a time when the appellant had no duty to notify the Department of the change.
  - F. When the Office of Appeals receives a request for a hearing that the appellant did not timely file, the Office of Appeals shall schedule a hearing to determine whether the delay in submission is excusable, as provided in subsection (E).
  - G. An appellant whose appeal the Office of Appeals denies as untimely is entitled to petition for review of this issue as provided in R6-13-158.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

#### R6-13-145. Family Assistance Administration: Transmittal of Appeal

- A. The FAA shall notify the Office of Appeals of a request for hearing within two workdays of receipt of the request.
- B. No less than 10 workdays before the scheduled hearing date, unless otherwise ordered, the FAA shall send the Office of Appeals and the appellant a prehearing summary. The prehearing summary shall include, at a minimum:
  1. The appellant's name,
  2. The appellant's Social Security number,
  3. The local office that issued the adverse action under appeal,
  4. A brief summary of the facts leading to the adverse action, and
  5. The legal or Administration policy basis for the adverse action.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

#### R6-13-146. Stay of Adverse Action Pending Appeal

- A. The Department shall stay the implementation of the adverse action until the hearing officer renders a decision on the appeal, if the appellant makes a request to stay the adverse action within 10 days from the date the Department mails the notice of adverse action, or otherwise transmits the notice as provided by law, except in the following circumstances:

1. The appellant expressly waives the delay of adverse action,
  2. The adverse action is a result of a uniform change in federal or state law,
  3. The appellant is requesting continued benefits when the time period for which the Department has approved benefits has expired,
  4. The Department has denied the appellant's initial or renewal application,
  5. The appeal challenges an action that is not appealable according to R6-13-142(B),
  6. The appellant withdraws the request for hearing, or
  7. The appellant fails to appear for the hearing without good cause.
- B.** The Department shall extend the 10-day time period in subsection (A) if the appellant establishes good cause. Good cause includes any unanticipated occurrence that, in the discretion of the Department, made it impossible or unreasonable for the appellant to make the request as specified in subsection (A).

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-147. Hearings: Location; Notice; Time**

- A.** The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing or permit a witness, upon request, to appear telephonically.
- B.** Unless the parties stipulate to another hearing date, the Office of Appeals shall schedule the hearing no earlier than 20 days from the date the Department receives the appellant's request for hearing.
- C.** The Office of Appeals shall mail, or otherwise transmit as provided by law, a notice of hearing to all interested parties at least 20 days before the scheduled hearing date.
- D.** The notice of hearing shall be in writing and shall include the following information:
1. The date, time, and place of the hearing;
  2. The name of the hearing officer;
  3. A general statement of the issues involved in the case;
  4. A statement listing the parties' rights as specified in R6-13-152; and
  5. A general statement of the hearing procedures.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-148. Postponing the Hearing**

- A.** A party may ask for postponement of a hearing by calling or writing the Office of Appeals and providing good cause as to why the Office of Appeals should postpone the hearing. Good cause exists if circumstances beyond the party's reasonable control make it unduly difficult or burdensome for the party or the party's counsel to attend the hearing on the scheduled date.
- B.** Except in emergency circumstances, the appellant shall ensure that the Office of Appeals receives the request for postponement at least five workdays before the scheduled hearing date. The Office of Appeals is entitled to deny an untimely request. Emergency circumstances mean circumstances:
1. Beyond the reasonable control of the party,
  2. That did not arise until after the five-day period, and
  3. That the party could not reasonably anticipate.
- C.** When the Office of Appeals reschedules a hearing under this Section, the Office of Appeals shall mail, or otherwise transmit as provided by law, the notice of rescheduled hearing at least 11 days prior to the date of the rescheduled hearing.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-149. Hearing Officer: Duties and Qualifications**

- A.** An impartial hearing officer in the Office of Appeals shall conduct all hearings.
- B.** The hearing officer shall:
1. Administer oaths and affirmations;
  2. Regulate and conduct hearings in an orderly and dignified manner that avoids unnecessary repetition and affords due process to all participants;
  3. Ensure consideration of all relevant issues;
  4. Exclude evidence that is not competent, relevant, or material, or that is unduly repetitious from the record;
  5. Request, receive, and incorporate relevant evidence into the record;
  6. Subpoena witnesses or documents needed for the hearing upon compliance with the requirements of R6-13-151;
  7. Open, conduct, and close the hearing;
  8. Rule on the admissibility of evidence offered at the hearing;
  9. Direct the order of proof at the hearing;
  10. Upon the request of a party, or on the hearing officer's own motion, and for good cause shown, take action the hearing officer deems necessary for the proper disposition of an appeal, including the following:
    - a. Disqualify himself or herself from the case,
    - b. Continue the hearing to a future date or time,
    - c. Reopen the hearing to take additional evidence prior to the entry of a final decision,
    - d. Deny or dismiss an appeal or request for hearing in accordance with the provisions of this Article,
    - e. Exclude nonparty witnesses from the hearing room; and
  11. Issue a written decision resolving the appeal.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-150. Change of Hearing Officer; Challenges for Cause**

- A.** A party may request a change of hearing officer as prescribed in A.R.S. § 41-1992(B) by filing an affidavit that shall include:
1. The case name and number,
  2. The hearing officer assigned to the case, and
  3. The name and signature of the party requesting the change.
- B.** The party requesting the change shall file the affidavit with the Office of Appeals and send a copy to all other parties at least five days before the scheduled hearing date.
- C.** A party shall request only one change of hearing officer unless that party is challenging a hearing officer for cause under subsection (E).
- D.** A party may not request a change of hearing officer once the hearing officer has heard and decided a substantive motion except as provided in subsection (E).
- E.** At any time before a hearing officer renders a decision, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.
- F.** A party who brings a challenge for cause shall file an affidavit as provided in subsection (A) and send a copy of the affidavit to all other parties. The affidavit shall explain the reason why the assigned hearing officer is not impartial or disinterested.
- G.** The hearing officer being challenged for cause may hear and decide the challenge unless:

1. A party specifically requests that another hearing officer make the determination, or
  2. The assigned hearing officer disqualifies himself or herself from the decision.
- H.** The Office of Appeals shall transfer the case to another hearing officer when:
1. A party requests a change as provided in subsections (A) through (D); or
  2. The hearing officer is removed for cause, as provided in subsections (E) through (G).
- I.** The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-151. Subpoenas**

- A.** A party who wishes to have a witness testify at a hearing or to offer a particular document or item in evidence shall first attempt to obtain the witness or evidence by voluntary means. Department documents are available to the appellant as prescribed in R6-13-152(2).
- B.** If the party cannot procure the voluntary attendance of the witness or production of the evidence, the party may ask the hearing officer assigned to the case to issue a subpoena for a witness, document, or other physical evidence or to otherwise obtain the requested evidence.
- C.** The party seeking the subpoena shall send the hearing officer a written request for a subpoena. The request shall include:
1. The case name and number;
  2. The name of the party requesting the subpoena;
  3. The name and address of any person to be subpoenaed, with a description of the subject matter of the witness's anticipated testimony;
  4. A description of any documents or physical evidence the appellant desires the hearing officer to subpoena, including the title, appearance, and location of the item if the appellant knows its location, and the name and address of the person in possession of the item;
  5. A statement about the expected substance of the testimony or other evidence as well as the relevance and importance of the requested testimony or other evidence; and
  6. A description of the party's efforts to obtain the witness or evidence by voluntary means.
- D.** A party who wants a subpoena shall ask for the subpoena at least five days before the scheduled hearing date.
- E.** The hearing officer shall deny the request if the witness's testimony or the physical evidence is not relevant to an issue in the case or is duplicative.
- F.** The Office of Appeals shall prepare all subpoenas and serve them by mail, except that the Office of Appeals may serve subpoenas to state employees who are appearing in the course of their jobs, by regular mail, hand-delivered mail, electronic mail, or interoffice mail.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-152. Parties' Rights**

The claimant and the Department have the following rights:

1. The right to request a postponement of the hearing as provided in R6-13-148;
2. The right to copy before or during the hearing any documents in the Department's file on the appellant and documents the Department might use at the hearing, except

documents shielded by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws;

3. The right to request a change of hearing officer as provided in A.R.S. § 41-1992(B) and R6-13-150;
4. The right to request subpoenas for witnesses and evidence as provided in R6-13-151;
5. The right to present the case in person or through an authorized representative, subject to any limitations on the unauthorized practice of law in the Rules of the Supreme Court of Arizona, Rule 31;
6. The right to present evidence and to cross-examine witnesses; and
7. The right to further appeal, as provided in R6-13-158 and R6-13-160 if dissatisfied with a decision reached by the Office of Appeals.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-153. Withdrawal of an Appeal**

- A.** An appellant may withdraw an appeal at any time prior to the time the hearing officer renders a decision.
1. An appellant may withdraw an appeal verbally, either in person or by telephone. The Department may record the audio of the withdrawal.
  2. An appellant may withdraw an appeal by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose.
- B.** The Office of Appeals shall dismiss the appeal upon receipt of a withdrawal request signed by the appellant or the appellant's representative, or upon receipt of a statement of withdrawal made on the record when the hearing officer has accepted the withdrawal.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-154. Failure to Appear; Default; Reopening**

- A.** If an appellant fails to appear at the scheduled hearing, the hearing officer shall:
1. Enter a default and issue a decision dismissing the appeal, except as provided in subsection (B);
  2. Rule summarily on the available record; or
  3. Adjourn the hearing to a later date and time.
- B.** The hearing officer shall not enter a default if the appellant notifies the Office of Appeals before the scheduled time of hearing that the appellant cannot attend the hearing because of good cause and still desires a hearing or wishes to have the matter considered on the available record.
- C.** A party who did not appear at a scheduled hearing date may file, no more than 10 days after a dismissal date, a request to reopen the proceedings. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.
- D.** The hearing officer shall set the matter for a hearing to determine whether the appellant had good cause for failing to appear.
- E.** If the hearing officer finds that the party had good cause for failure to appear, the hearing officer shall reopen the proceedings and schedule a new hearing with notice to all interested parties as prescribed in R6-13-147.
- F.** Good cause, for the purpose of reopening a hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party. Good cause also exists

when the nonappearing party demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. “Excusable neglect” has the meaning applied to “excusable neglect” as that term is used in Arizona Rules of Civil Procedure, Rule 60(c).

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-155. Hearing Proceedings**

- A. The hearing is a de novo proceeding. The Department has the initial burden of going forward with evidence to support the adverse action being appealed.
- B. To prevail, the appellant shall prove, by a preponderance of the evidence, that the Department’s action was unauthorized, unlawful, or an abuse of discretion.
- C. The Arizona Rules of Evidence do not apply at the hearing. The hearing officer may admit and give probative effect to evidence as prescribed in A.R.S. § 23-674(D).
- D. The Office of Appeals shall record all hearings. The Office of Appeals need not transcribe the proceedings unless a transcription is required for further administrative or judicial proceedings.
- E. The Office of Appeals charges a fee of 15¢ per page for providing a transcript. A party may obtain a waiver of the fee by submitting an affidavit stating that the party cannot afford to pay for the transcript.
- F. A party may, at his or her own expense, arrange to have a court reporter present to transcribe the hearing, provided that such transcription does not delay or interfere with the hearing. The Office of Appeal’s recording of the hearing shall constitute the official record of the hearing.
- G. The hearing officer shall call the hearing to order and dispose of any prehearing motions or issues.
- H. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.
- I. Upon request and with the consent of the hearing officer, a party may make opening and closing statements. The hearing officer shall consider any statements as argument and not evidence.
- J. A party may testify, present evidence, and cross-examine adverse witnesses. The hearing officer may also take witness testimony or admit documentary or physical evidence on his or her own motion.
- K. The hearing officer shall keep a complete record of all proceedings in connection with an appeal.
- L. The hearing officer may require the parties to submit memoranda on issues in the case if the hearing officer finds that the memoranda would assist the hearing officer in deciding the case. The hearing officer shall establish a briefing schedule for any required memoranda.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-156. Hearing Decision**

- A. No later than 60 days after the date the appellant files a request for hearing with the Department, the hearing officer shall render a decision based solely on the evidence and testimony produced at the hearing and the applicable law. The 60-day time limit is extended for any delay necessary to accommodate hearing continuances or extensions, or postponements requested by a party.
- B. The hearing decision shall include:
  1. Findings of fact concerning the issue on appeal,

2. Citations to the law and authority applicable to the issue on appeal,
  3. A statement of the conclusions derived from the controlling facts and law and the reasons for the conclusions,
  4. The name of the hearing officer,
  5. The date of the decision, and
  6. A statement of further appeal rights and the time period for exercising those rights.
- C. The Office of Appeals shall mail, or otherwise transmit as provided by law, a copy of the decision to each party’s representative or to the party if the party is unrepresented.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-157. Effect of the Decision**

- A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective as of the date of the initial determination of adverse action by the Department. The adverse action remains effective until the appellant appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer’s decision.
- B. If the hearing officer vacates, sets aside, or reverses the Administration’s decision to take adverse action, the Administration shall not take the action or shall reverse any adverse action taken unless and until the Appeals Board, under A.R.S. § 23-672, or Arizona Court of Appeals issues a decision affirming the adverse action.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-158. Further Administrative Appeal**

- A. A party can appeal an adverse decision issued by a hearing officer to the Department’s Appeals Board as prescribed in A.R.S. § 41-1992(C) and (D) by filing a written petition for review with the Office of Appeals within 15 days of the mailing date, or the transmittal date when transmitted in a manner other than by mail, as provided by law, of the hearing officer’s decision.
- B. The petition for review shall:
  1. Be in writing,
  2. Describe why the party disagrees with the hearing officer’s decision, and
  3. Be signed and dated by the party or the party’s representative.
- C. The party petitioning for review shall mail a copy of the petition to all other parties.
- D. The Appeals Board is not obligated to have the proceedings of the hearing transcribed.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-159. Appeals Board**

- A. The Appeals Board shall conduct proceedings in accordance with A.R.S. §§ 41-1992(D) and 23-672.
- B. Following notice to the parties, the Appeals Board may receive additional evidence or hold a hearing if the Appeals Board finds that additional information will help in deciding the appeal. The Appeals Board may also remand the case to the Office of Appeals for rehearing, specifying the nature of the additional evidence required or any further issues for consideration.

C. The Appeals Board shall decide the appeal based solely on the record of proceedings before the hearing officer and any further evidence or testimony presented to the Appeals Board.

D. The Appeals Board shall issue and mail, or otherwise transmit as provided by law, to all parties a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision. The decision of the Appeals Board shall specify the parties' rights to further review and the time for filing a request for review.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-160. Judicial Review**

Any party adversely affected by an Appeals Board decision may seek judicial review as prescribed in A.R.S. § 41-1993.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**R6-13-161. Availability of TC Payments**

The availability of TC payments is subject to budgetary restrictions.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

**ARTICLE 2. EXPIRED**

**R6-13-201. Expired**

**Historical Note**

R6-13-201 recodified from A.A.C. R6-3-201 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-202. Expired**

**Historical Note**

R6-13-202 recodified from A.A.C. R6-3-202 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-203. Expired**

**Historical Note**

R6-13-203 recodified from A.A.C. R6-3-203 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-204. Expired**

**Historical Note**

R6-13-204 recodified from A.A.C. R6-3-204 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-205. Expired**

**Historical Note**

R6-13-205 recodified from A.A.C. R6-3-205 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-206. Expired**

**Historical Note**

R6-13-206 recodified from A.A.C. R6-3-206 effective

February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-207. Expired**

**Historical Note**

R6-13-207 recodified from A.A.C. R6-3-207 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-208. Expired**

**Historical Note**

Reserved section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-209. Expired**

**Historical Note**

R6-13-209 recodified from A.A.C. R6-3-209 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-210. Expired**

**Historical Note**

Reserved section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-211. Expired**

**Historical Note**

R6-13-211 recodified from A.A.C. R6-3-211 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-212. Expired**

**Historical Note**

R6-13-212 recodified from A.A.C. R6-3-212 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-213. Expired**

**Historical Note**

Reserved section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-214. Expired**

**Historical Note**

R6-13-214 recodified from A.A.C. R6-3-214 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-215. Expired**

**Historical Note**

R6-13-215 recodified from A.A.C. R6-3-215 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-216. Expired**

**Historical Note**

R6-13-216 recodified from A.A.C. R6-3-216 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August

**R6-13-319. Expired****Historical Note**

R6-13-319 recodified from A.A.C. R6-3-319 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-320. Expired****Historical Note**

R6-13-320 recodified from A.A.C. R6-3-320 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-321. Expired****Historical Note**

R6-13-321 recodified from A.A.C. R6-3-321 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

**R6-13-322. Expired****Historical Note**

R6-13-322 recodified from A.A.C. R6-3-322 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective August 29, 2009 (Supp. 09-4).

**ARTICLE 4. RESERVED****ARTICLE 5. RESERVED****ARTICLE 6. REPEALED**

*Article 6, consisting of Sections R6-13-601 through R6-13-604, repealed by final rulemaking at 18 A.A.R. 1863, effective July 10, 2012 (Supp. 12-3).*

**R6-13-601. Repealed****Historical Note**

R6-13-601 recodified from A.A.C. R6-3-601 effective February 13, 1996 (Supp. 96-1). Section R6-13-601 repealed by final rulemaking at 18 A.A.R. 1863, effective July 10, 2012 (Supp. 12-3).

**R6-13-602. Repealed****Historical Note**

R6-13-602 recodified from A.A.C. R6-3-602 effective February 13, 1996 (Supp. 96-1). Section R6-13-602 repealed by final rulemaking at 18 A.A.R. 1863, effective July 10, 2012 (Supp. 12-3).

**R6-13-603. Repealed****Historical Note**

R6-13-603 recodified from A.A.C. R6-3-603 effective February 13, 1996 (Supp. 96-1). Section R6-13-603 repealed by final rulemaking at 18 A.A.R. 1863, effective July 10, 2012 (Supp. 12-3).

**R6-13-604. Repealed****Historical Note**

R6-13-604 recodified from A.A.C. R6-3-604 effective February 13, 1996 (Supp. 96-1). Section R6-13-604 repealed by final rulemaking at 18 A.A.R. 1863, effective July 10, 2012 (Supp. 12-3).

**ARTICLE 7. REPEALED**

*Article 7, consisting of Section R6-13-701, repealed by exempt rulemaking at 9 A.A.R. 3966, effective October 20, 2003 (Supp. 03-3).*

**R6-13-701. Repealed****Historical Note**

R6-13-701 recodified from A.A.C. R6-3-701 effective February 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 9 A.A.R. 3966, effective October 20, 2003 (Supp. 03-3).

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

**ARTICLE 8. SHORT-TERM CRISIS SERVICES**

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

**R6-13-801. Definitions**

The definitions in A.R.S. § 46-241 and following definitions apply in this Article.

1. "Basic necessities" means the situations or possessions necessary to maintain a safe and healthy living environment, including shelter, food, and clothing.
2. "Child" means a person under the age of 18 years.
3. "Contract" means an executed agreement with specified terms and limits between the Department and a government agency or a private entity for the purposes of delivering goods or services for the Department for monetary reimbursement.
4. "Contract provider" means a public or private entity with which the Department has a contract to provide goods or services for recipients of short-term crisis services.
5. "Department" means the Department of Economic Security, Community Services Administration.
6. "Diagnosis" means an opinion rendered by a doctor of medicine, a doctor of osteopathy, or a psychologist certified by either the Arizona Board of Psychologist Examiners or by the Department of Education.
7. "Disabled person" means a person who has been diagnosed as having a physical or mental impairment which substantially limits one or more of that person's major life activities.
8. "Elderly person" means a person 60 years of age or older.
9. "Federal Poverty Guidelines" means the national guidelines which designate the amount of income that signifies poverty, and which are issued by the United States Department of Health and Human Services and published in the *Federal Register*.
10. "Homeless person" means a person who lacks a fixed, regular, and adequate nighttime residence, or a person who has primary nighttime residence in a building used

- for temporary sleeping accommodations but does not include a person who is imprisoned or otherwise detained in a government facility under federal or state law.
11. "Household" means all adults and children who reside together in the same dwelling.
  12. "Major life activities" means activities necessary to care for one's self through performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.
  13. "Resident" means a person who dwells and intends to remain in Arizona.
  14. "Self-sufficiency Diversion Option" means cash assistance option offered to certain TANF applicants pursuant to A.R.S. § 46-353.
  15. "Short-term Crisis Services" means a benefit which is distributed in the form of vendor payments or warrants, issued on behalf of an eligible household, for the household's basic necessities.
  16. "TANF" means Temporary Assistance for Needy Families, which is *assistance granted under section 403 of Title IV of the Social Security Act as it exists after August 21, 1996.* (A.R.S. § 46-101(20)).
  17. "Temporary sleeping accommodations" means a building that is publicly or privately operated for the purposes of providing overnight shelter to a homeless person or domestic violence victim and includes homeless shelters and domestic violence shelters.
  18. "Unforeseen expenses" means living costs which were unexpected and cannot be avoided.
  19. "Vendor agreement" means a written agreement between the Department and a provider of goods or services who has agreed to accept reimbursement from the Department on behalf of the short-term crisis services recipient.
  20. "Work day" means Monday through Friday excluding Arizona state holidays.

#### Historical Note

R6-13-801 recodified from A.A.C. R6-3-801 effective February 13, 1996 (Supp. 96-1). Amended effective August 4, 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 amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

#### R6-13-802. Application Procedures

- A. To apply for short-term crisis services, an applicant shall:
  1. Participate in a face-to-face interview with an employee of the contract agency in the applicant's geographic area;
  2. File a written application on a Department form with the contract agency; and
  3. Provide the contract agency with the information listed in subsections (C) and (D).
- B. The completed application form shall contain the following information:
  1. For the applicant and all household members:
    - a. Name, address, and telephone number;
    - b. Personal information, including citizenship, residency, date of birth, social security number, gender, and ethnicity; and

- c. Gross monthly countable income as defined in R6-13-805;
2. Relationship of all household members;
3. The short-term crisis service the household is requesting and the reason services are needed; and
4. For all household members age 16 and older, an employment history for 30 days preceding the date of application; and
5. The applicant shall provide information regarding the household members' application for short-term crisis services and TANF cash assistance during the 12 months preceding the date of application; and
6. The applicant's signature and date of application.
- C. The applicant shall provide documentation of the employment history and countable income required by subsection (B)(1)(c) and (B)(4).
- D. The contract provider shall close an incomplete application if the applicant does not provide all required information within five days after the application postmark date.
- E. An applicant whose file has been closed and who later wants services shall submit a new application.
- F. Within 15 work days of the date of receiving a completed application, the contract provider shall send the applicant written notification of eligibility for services.

#### Historical Note

R6-13-802 recodified from A.A.C. R6-3-802 effective February 13, 1996 (Supp. 96-1). Amended effective August 4, 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 repealed and the new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

#### R6-13-803. General Eligibility Requirements

- A. To be eligible for short-term crisis services, a person shall:
  1. Reside in the state of Arizona;
  2. Have an emergent need that can be met by the provision of at least one of the types of assistance defined in R6-13-807; and
  3. Lack income and resources to meet the emergent need.
- B. The following persons are ineligible for short-term crisis services:
  1. A Native American who resides on a reservation,
  2. A person being sanctioned by the TANF program, and
  3. A person receiving benefits under the self-sufficiency diversion option.

#### Historical Note

R6-13-803 recodified from A.A.C. R6-3-803 effective February 13, 1996 (Supp. 96-1). Section repealed; new Section R6-13-803 renumbered from R6-13-804 and amended effective August 4, 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 renumbered and the new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title*

*41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-13-804. Financial Eligibility Requirements; Countable Income**

- A. To be eligible for short-term crisis services, a person must be in a household that meets the following requirements on the date of application:
1. The household's total gross countable monthly income for the previous 30 days, including the day the application does not exceed 125% of the Federal Poverty Guidelines; or
  2. For households with an elderly or disabled person, the household's total gross countable income for the previous 30 days, including the day of the application does not exceed 150% of the Federal Poverty Guidelines.
- B. When determining financial eligibility, the Department shall include countable income of all household members except as provided in subsection (C). Countable income includes:
1. Earned income;
  2. Governmental cash benefits;
  3. Dividends over \$50 per month;
  4. Interest income over \$50 per month;
  5. Child support;
  6. Alimony;
  7. Net rental income;
  8. Annuities;
  9. Royalties;
  10. Strike benefits;
  11. Workers' compensation;
  12. Unemployment insurance benefits;
  13. Monthly payment from real property sales;
  14. Proceeds from the sale of a house or car;
  15. Military allotments;
  16. Grants and scholarships that do not need to be repaid, excluding funds identified for tuition and books;
  17. Work-study money;
  18. Net gambling or lottery winnings;
  19. Lump sum payments;
  20. Mileage allowances; and
  21. Cash gifts not specifically excluded in subsection (D).
- C. Countable income does not include:
1. The value of food stamps;
  2. Any portion of an education grant or scholarship used for tuition and books;
  3. Earned income of a child under 16 years of age;
  4. Cash gifts of \$50 or less per month per household member;
  5. Tax refunds;
  6. Non-cash benefits provided on behalf of household member but not paid directly in the name of the household member, including vouchers for food, clothing, or housing;
  7. Loans that need to be repaid;
  8. Money which a household member receives and uses for the care and maintenance of a person who is not a household member;
  9. Stipends from senior companion programs; and
  10. Other income not specifically listed as countable.

**Historical Note**

R6-13-804 recodified from A.A.C. R6-3-804 effective February 13, 1996 (Supp. 96-1). Section renumbered to

R6-13-803; new Section R6-13-804 renumbered from R6-13-805 and amended effective August 4, 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 renumbered and the new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-13-805. Emergent Need Eligibility Requirements**

In order to be eligible for emergency assistance, a person shall be in a household which is experiencing or which expects to experience:

1. Homelessness that was caused by one or more of the following:
  - a. Domestic violence;
  - b. Loss of income;
  - c. Unforeseen circumstances that increase the household's expenditures, making it impossible to meet budgeted expenditures without short-term crisis services; or
  - d. A condition that endangers the health or safety of a household member;
  - e. Other similar emergency situations.
2. Interruption of heating or cooling of the household's dwelling that was caused by:
  - a. Domestic violence,
  - b. Loss or of income,
  - c. Unforeseen circumstances that increased the household's expenditures making it impossible to meet the following months' budgeted expenditures without short-term crisis services,
  - d. A condition that endangers the health or safety of the household, or
  - e. Other similar emergency situations.

**Historical Note**

R6-13-805 recodified from A.A.C. R6-3-805 effective February 13, 1996 (Supp. 96-1). Section renumbered to R6-13-804; new Section R6-13-805 renumbered from R6-13-806 and amended effective August 4, 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 renumbered and the new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-13-806. Types of Assistance; Duration**

- A. The Department, through its contract providers, shall provide short-term crisis services to alleviate or prevent homelessness through payments for:
1. Emergency shelter at homeless shelter facilities, hotels, or motels;

2. Rent or rental deposits to move homeless families into permanent housing;
  3. Rent or mortgage payments for household that anticipate homelessness; or
  4. Special needs necessary to continue or secure employment when no other resources are available. "Special needs" include auto repair, dental work, and eyeglasses.
- B.** The Department shall provide short-term crisis services to alleviate or prevent the loss of heating or cooling through payments for:
1. Utility bill assistance;
  2. Rent when utilities are included;
  3. Utility deposits; or
  4. Repair or replacement of appliances needed for a safe and healthy living environment, such as water heaters, cooking stoves, microwaves, furnaces, refrigerators, evaporative coolers, and water or sewer systems.
- C.** A household is eligible to receive short-term crisis services only one time in a 12-consecutive-month period. The contract provider agency shall determine what specific short-term crisis services to provide a household based on the information in the household's application.

#### Historical Note

R6-13-806 recodified from A.A.C. R6-3-806 effective February 13, 1996 (Supp. 96-1). Section renumbered to R6-13-805; new Section R6-13-806 renumbered from R6-13-807 and amended effective August 4, 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 renumbered and the new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

#### R6-13-807. Payments

- A.** In a 12-month period, as described in R6-13-806(C), the Department payment on behalf of an eligible household shall not exceed the amounts listed in this Section.
1. For emergency shelter at homeless facilities, no more than \$5,000.
  2. For utility assistance, the amount of the bill or \$500, whichever is less.
  3. For federally funded utility, repair or replacement and deposit, the actual cost or \$1,200, whichever is less.
  4. For state-funded utility repair, replacement, and deposit, the actual cost or \$600, whichever is less.
  5. For rent, rental deposits, or mortgage assistance, the actual cost or \$1,500 per household whichever is less.
  6. For special needs as described in R6-13-808(A)(4), the actual cost or \$500, whichever is less.
- B.** The Department shall pay for all short-term crisis services through warrants to contract agencies or companies with which the contract agency has a written or verbal vendor agreement.

#### Historical Note

R6-13-807 recodified from A.A.C. R6-3-807 effective February 13, 1996 (Supp. 96-1). Section renumbered to R6-13-806; new Section R6-13-807 renumbered from R6-13-808 and amended effective August 4, 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 renumbered and a new Section adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

#### R6-13-808. Notification

The contract agency which the Department has a written contract with shall be responsible for sending the applicant a decision letter upon determination of eligibility.

#### Historical Note

R6-13-808 recodified from A.A.C. R6-3-808 effective February 13, 1996 (Supp. 96-1). Section renumbered to R6-13-807; new Section adopted effective August 4, 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 amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

#### R6-13-809. Complaints, Hearings, and Appeals

- A.** The following decisions are appealable:
1. Denial of eligibility,
  2. The amount of assistance awarded, and
  3. Termination or reduction of assistance.
- B.** To appeal, an applicant shall file a written request for appeal with the contract agency, within 10 working days of the post-mark date of the letter denying eligibility or affecting benefits.
- C.** The Department shall conduct appeals pursuant to the procedures set forth in R6-13-1208(G) through (N).

#### Historical Note

R6-13-809 recodified from A.A.C. R6-3-809 effective February 13, 1996 (Supp. 96-1). Amended effective August 4, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

### ARTICLE 9. REPEALED

#### R6-13-901. Expired

#### Historical Note

R6-13-901 recodified from A.A.C. R6-3-901 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 617, effective August 31, 2004 (Supp. 05-1).

#### R6-13-902. Repealed

#### Historical Note

R6-13-902 recodified from A.A.C. R6-3-902 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

#### 41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act, 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.

#### 46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.
2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.
3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.
4. Act as agent of the federal government in furtherance of any functions of the state department.
5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.
6. Cooperate with the superior court in cases of delinquency and related problems.
7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.
8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.
9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.
10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.
11. Administer any additional welfare functions required by law.
12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.
13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.
14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the

state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

### 36-716. Payment of assistance

A. An afflicted person who is under medical treatment for tuberculosis prior to release for employment and who needs or whose family needs financial assistance shall be referred to the department of economic security for determination of financial assistance eligibility.

B. The department of economic security shall determine and furnish assistance that is necessary to provide adequate support for those who have a legal claim for support or care from the afflicted person and for that person if the tuberculosis control officer or local health officer has approved that person or a member or members of that person's family for assistance.

#### 46-241.01. Short-term crisis services

The department, through its agent, shall administer short-term crisis services. Short-term crisis services include:

1. Emergency shelter to eligible persons.
2. Rent or mortgage assistance to prevent homelessness.
3. Utility assistance for eligible persons with a current or anticipated interruption of heating or cooling services, or both, if the person's health and safety will be put in danger.
4. Utility repair and replacement.
5. Special needs as determined by the department to secure or maintain employment.

**STATE BOARD OF HOMEOPATHIC AND INTEGRATED MEDICINE EXAMINERS**  
Title 4, Chapter 38, Articles 1-4, Possessions and Occupations



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 22, 2019

**SUBJECT: ARIZONA STATE BOARD OF HOMEOPATHIC AND INTEGRATED  
MEDICINE EXAMINERS (F19-0704)**  
Title 4, Chapter 38, Articles 1-4, Possessions and Occupations

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This five year review report (5YRR) from the Arizona State Board of Homeopathic and Integrated Medicine Examiners (Board) relates to all sections of Title 4, Chapter 38, Articles 1-4. The rules cover the following:

- Article 1: General;
- Article 2: Dispensing of Drugs by Homeopathic Physicians;
- Article 3: Education, Supervision, and Delegation Standards for Registration of Medical Assistants by Homeopathic Physicians; and
- Article 4: Application and Renewal Process; Time Frames.

In its prior 5YRR, the Board drafted rules to implement statutory changes that went into effect in January of 2015. However, the Board did not ultimately complete the rulemaking because no schools currently provide the necessary education to obtain the new licensing type. Currently, the Board is reviewing this license type and considering new necessary rulemaking.

### **Proposed Action**

For the reasons indicated below, the Board plans to request an exemption from the rulemaking moratorium and expects to open a rulemaking package by December 2019. The

purpose of the package would be to amend rules, thus allowing the Board to do business electronically and to address issues indicated below.

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

Yes. The Board cites to both general and specific authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board has determined that the economic impact of Chapter 38 does not differ significantly from what was originally determined by the economic, small business, and consumer impact statement (EIS) from the most recent rulemaking in 2012. No prior EIS was available for review. The Board notes that the economic impact has been predominantly created by statutes, not rules.

The stakeholders include the Board, homeopathic physicians, homeopathic medical assistants, and the public.

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

Yes. The Board has determined that the rules under review provide the least intrusive and least costly method of achieving the regulatory objective. The Board has identified several ways to improve the rules, and it intends to submit a rulemaking to the Council by December 2019.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Board has not received written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Board indicates that the rules are effective in achieving their objectives. The Board also indicates that a number of rules are effective but should be reconsidered or changed in order to increase effectiveness.

The Board states that the rules as they are written are clear, concise, and understandable. The Board identifies one ambiguous rule, R4-38-118 (Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement), but suggests a change to increase understandability and ensure clarity.

The Board indicates that the statutory citation in R4-38-103 is incorrect due to changes in statute and must be updated.

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

Yes. The Board indicates that the rules are enforced as written.

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

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

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes. The following rules were made after July 29, 2010 and tangentially require the issuance of a regulatory permit or license: R4-28-103, R4-28-104, R4-28-105, R4-28-107, R4-28-108, R4-28-109, and R4-28-117. The aforementioned rules deal with a regulatory permit, license, or agency authorization that is issued to qualified individuals to conduct activities substantially similar in nature and is therefore considered a general permit. These rules comply with A.R.S. § 41-1037.

9. **Conclusion**

For the reasons identified above and in the 5YRR, the Board plans to request an exemption from the rulemaking moratorium and expects to open a rulemaking package by December 2019. The purpose of the package would be to amend rules, thus allowing the Board to do business electronically and to address issues indicated. Council staff recommends approval of this report.

**Douglas A. Ducey**  
Governor  
**Mary Grace**  
**Warner-Dunlop, MD,**  
**MD(H)**  
President  
**Alan Kennedy**  
Vice President  
**Mario Fontes**  
Secretary-Treasurer



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and  
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**David Geriminsky**  
Executive Director  
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April 12, 2019

Nicole Sornsin, Chairperson  
Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

**RE: Five-year-review Report on 4 A.A.C. 38**

Dear Ms. Sornsin:

As required by A.R.S. § 41-1056, the Board of Homeopathic and Integrated Medicine Examiners submits for your approval a report on a review of its rules including Title 4, Chapter 38, Articles 1, 2, 3, and 4. As required under A.R.S. § 41-1056(A), the Board certifies that it is in compliance with A.R.S. § 41-1091.

If you have questions regarding this report, please contact me by email at [director@homeopath.az.gov](mailto:director@homeopath.az.gov) or by phone at (602) 542-3095. Thank you for your consideration.

Yours in Service,

David Geriminsky  
Executive Director

Attachment: Five-Year Rule Review Report

**Governor's Regulatory Review Council**

**Five-Year-Review Report**

**Arizona Board of Homeopathic and Integrated Medicine Examiners**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S § 32-2904(B)(1)

Specific Statutory Authority:

R4-38-101. Definitions: A.R.S. § 32-2904(B)(1)

R4-38-102. Additional Requirements for Applicants Graduated from an Unapproved School of Medicine: A.R.S. § 32-2912(A)(2)

R4-38-103. Postgraduate Requirements for Licensure: A.R.S. § 32-2912(G)(3)

R4-38-104. Approved Postgraduate Coursework: A.R.S. § 32-2912(G)(3)

R4-38-105. Approval of Preceptorship: A.R.S. § 32-2912(G)(3)

R4-38-106. Fees: A.R.S. §§ 32-2914 and 32-2916

R4-38-107. Examination: A.R.S. § 32-2913

R4-38-108. Application for Licensure: A.R.S. § 32-2912(A)(8) and (G)

R4-38-109. License Renewal: A.R.S. § 32-2915

R4-38-110. Notification of Change in Contact Information: A.R.S. § 32-2916(B)

R4-38-111. Experimental Forms of Diagnosis and Treatment: A.R.S. § 32-2933(27)

R4-38-112. Peer Review: A.R.S. § 32-2933(27)

R4-38-113. Chelation Therapy Practice Requirements: A.R.S. § 32-2901(6)

R4-38-114. Rehearing or Review of Decision: A.R.S. § 41-1092

R4-38-115. Use of Title and Abbreviation: A.R.S. § 32-2932

R4-38-116. Continuing Education Requirement: A.R.S. § 32-2915(F)

R4-38-117. Application for Continuing Education Approval: A.R.S. § 32-2915(F)

R4-38-118. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement: A.R.S. § 32-2915(F)

R4-38-201. Definitions: A.R.S. § 32-2951

R4-38-202. General Provisions: A.R.S. § 32-2951

R4-38-206. Packaging: A.R.S. § 32-2951

R4-38-301. Definitions: A.R.S. §§ 32-2901(15), 32-2904(A)(9), 32-2933, and 32-2939

R4-38-302. Requirements to Supervise a Medical Assistant; Standards for Supervision: A.R.S. §§ 32-2904(A)(9) and 32-2939

R4-38-303. Board Standards for a Formal Education Program: A.R.S. § 32-2904(A)(9)

R4-38-304. Approved Practical Education Program; Renewal: A.R.S. § 32-2904(A)(9)

R4-38-305. Minimum Requirements for Registration of a Homeopathic Medical Assistant: A.R.S. § 32-2904(A)(9)

R4-38-306. Application to Register a Medical Assistant: A.R.S. § 32-2904(A)(9)

R4-38-307. Additional Requirements to Register a Previously Licensed Health Care Practitioner: A.R.S. § 32-2904(A)(9)

R4-38-308. Renewal of Medical Assistant Registration: A.R.S. § 32-2904(A)(9)

R4-38-309. Restrictions on Delegated Procedures: A.R.S. §§ 32-2904(A)(9) and 32-2939

R4-38-310. Registration Not Transferable; Multiple Employers: A.R.S. § 32-2904(A)(9)

R4-38-311. Responsibilities of a Registered Medical Assistant: A.R.S. § 32-2904(A)(9)

R4-38-312. Unprofessional Conduct: A.R.S. § 32-2904(A)(9)

R4-38-401. Definitions: A.R.S. §§ 32-2912(A)(8) and (G) and 32-2915(G)

R4-38-402. Application; Initial License, Permit, or Registration: A.R.S. §32-2912(A)(8) and (G)

R4-38-403. Application; Renewal of License, Permit, or Registration: A.R.S. §32-2915(G)

2. **The objective of each rule:**

Rule	Objective
R4-38-101	Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition, and to supplement statutory definitions. The definitions are designed to facilitate understanding by those who use the rules.
R4-38-102	Additional Requirements for Applicants Graduated from an Unapproved School of Medicine: The objective of the rule is to specify the medical education that the Board has determined is of equivalent quality to that provided by an approved school of medicine. The purpose is to provide a means by which an individual who did not graduate from an approved school of medicine can become licensed.
R4-38-103	Postgraduate Requirements for Licensure: The objective of the rule is to specify postgraduate alternatives to having a degree in homeopathic medicine. The purpose is to provide a means by which an individual who did not obtain a degree in homeopathic medicine can become licensed.
R4-38-104	Approved Postgraduate Coursework: The objective of this rule is to specify postgraduate course work that the Board determined qualifies an individual for licensure even if the individual did not obtain a degree in homeopathic medicine. The purpose is to provide a means by which an individual who did not obtain a degree in homeopathic medicine can become licensed.
R4-38-105	Approval of Preceptorship: The objective is to specify the standards and procedure for obtaining the Board's approval of a preceptorship. The purpose is to provide a means by which an individual who did not obtain a degree in homeopathic medicine can become licensed.
R4-38-106	Fees: The objective of the rule is to specify the fees that the Board charges for its licensing activities. This enables an applicant to submit the correct amount.
R4-38-107	Examination: The objective of the rule is to prescribe the examination applicants are required to pass before being licensed, establish the passing criterion, and indicate materials that may be taken to the examination. This provides an applicant with necessary information regarding the examination qualification criteria
R4-38-108	Application for Licensure: The objective of the rule is to specify information an applicant is required to submit to the Board and information the applicant is required to have others submit to the Board. This enables an applicant to ensure that all required information is submitted.
R4-38-109	License Renewal. The objective of the rule is to specify when a licensee is required to submit license renewal materials to the Board, the materials that must be submitted, and the consequences of failing to submit materials timely. This enables a licensee to renew timely and avoid having a license expire.
R4-38-110	Notification of Change in Contact Information. The objective of the rule is to provide notice that the Board communicates with a licensee using the information the licensee has provided. This ensures that a licensee knows it is important to keep the Board apprised of changes in contact information.
R4-38-111	Experimental Forms of Diagnosis and Treatment. The objective of the rule is to clarify what is and what is not an experimental form of diagnosis and treatment. This assists licensees to avoid engaging in unprofessional conduct

R4-38-112	Peer Review. The objective of the rule is to establish minimum standards for peer review committees, which is one of the generally accepted criteria for use with an experimental form of diagnosis and treatment. This assists licensees to avoid engaging in unprofessional conduct.
R4-38-113	Chelation Therapy Practice Requirements. The objective of the rule is to establish minimum standards for the practice of chelation therapy for other than the treatment of metal poisoning. This assists licensees to avoid engaging in unprofessional conduct.
R4-38-114	Rehearing or Review of Decision. The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.
R4-38-115	Use of Title and Abbreviation. The objective of the rule is to specify the manner in which a homeopathic physician may designate the kind of physician he or she is. This assists licensees to avoid engaging in unprofessional conduct.
R4-38-116	Continuing Education Requirement. The objective of the rule is to specify continuing education activities that are approved by the Board and the standards used to decide whether to approve additional continuing education activities. This enables a licensee to have confidence that a continuing education activity will be accepted for license-renewal purposes.
R4-38-117	Application for Continuing Education Approval: The objective of the rule is to specify the requirements and procedures for obtaining the Board's approval of a continuing education course. This enables licensees to know that a Board-approved course meets certain minimum standards and will be accepted for license-renewal purposes.
R4-38-118	Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement. The objective of the rule is to provide notice to licensees that the Board will audit compliance with the continuing education requirement and the manner in which an audited licensee is required to submit evidence of compliance. This enables a licensee to avoid being sanctioned for noncompliance.
R4-38-201	Definitions. The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.
R4-38-202	General Provisions. The objective of the rule is to provide notice to a licensee that a permit to dispense is required before the licensee dispenses a controlled substance, pharmaceutical drug, homeopathic medication, prescription-only drug, natural substance, non-prescription drug, or device. This protects the public from possible misuse of drugs.
R4-38-206	Packaging. The objective of the rule is to specify the manner in which a licensee is required to package dispensed drugs. This protects the public from possible misuse of drugs.
R4-38-301	Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.
R4-38-302	Requirements to Supervise a Medical Assistant; Standards for Supervision. The objective of the rule is to specify the manner in which a licensee must be qualified before supervising a medical assistant and the minimum standards for supervision of a medical assistant. This is to protect the public from care that does not meet generally accepted community standards.

R4-38-303	Board Standards for a Formal Education Program. The objective of the rule is to establish minimum standards for a medical-assistant formal educational program in various homeopathic modalities. This is to protect the public by ensuring that medical assistants who complete a formal educational program are prepared to provide quality care.
R4-38-304	Approved Practical Education Program; Renewal. The objective of the rule is to establish minimum standards for a medical-assistant practical educational program and procedures for obtaining the Board's approval of a practical educational program. This is to protect the public by ensuring that medical assistants who complete a practical educational program are prepared to provide quality care.
R4-38-305	Minimum Requirements for Registration of a Homeopathic Medical Assistant. The objective of the rule is to establish minimum standards for registering a homeopathic medical assistant. This is to protect the public by ensuring that both the medical assistant and the supervising homeopathic physician are qualified.
R4-38-306	Application to Register a Medical Assistant. The objective of the rule is to list the information required to register a medical assistant and the procedure for amending the job description of a registered medical assistant. This is to protect the public by ensuring that both the medical assistant and the supervising homeopathic physician are qualified.
R4-38-307	Additional Requirements to Register a Previously Licensed Health Care Practitioner. The objective of the rule is to specify additional requirements that apply when a licensee wants to register a previously licensed health care practitioner as a medical assistant. This is to protect the public from the possibility that a registered medical assistant may practice health care outside the scope of the medical assistant's job description.
R4-38-308	Renewal of Medical Assistant Registration. The objective of the rule is to specify when the registration of a medical assistant expires and the procedure for renewing the registration. This is to protect the public by ensuring that only a properly registered medical assistant provides care.
R4-38-309	Restrictions on Delegated Procedures. The objective of the rule is to specify procedures that may not be delegated to a medical assistant. This is to protect the public by ensuring that procedures requiring the knowledge and skill of a physician are provided by a physician rather than a medical assistant.
R4-38-310	Registration Not Transferable; Multiple Employers. The objective of the rule is to clarify that registration of a medical assistant is specific to the medical assistant and the employing homeopathic physician. The rule also clarifies the manner in which multiple homeopathic physicians employing the same medical assistant are required to register the medical assistant. This protects the public by clearly identifying the homeopathic physician responsible for supervising a medical assistant.
R4-38-311	Responsibilities of a Registered Medical Assistant. The objective of the rule is to specify the manner in which a registered medical assistant is required to communicate the medical assistant's status and the homeopathic modality in which the medical assistant is qualified. This protects the public from being confused regarding the qualification of the individual providing care.
R4-38-312	Unprofessional Conduct. The objective of the rule is to specify conduct relating to supervision of a medical assistant that is unprofessional. This enables a homeopathic physician to avoid conduct that might lead to disciplinary action.

R4-38-401	Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.
R4-38-402	Application; Initial License, Permit, or Registration. The objective of the rule is to specify the procedure and time-frames used by the Board to evaluate an application for initial license, permit, or registration. This enables an applicant to know what can be expected from the Board after an application is submitted.
R4-38-403	Application; Renewal of License, Permit, or Registration. The objective of the rule is to specify the procedure and time-frames used by the Board to evaluate an application for renewal of a license, permit, or registration. This enables an applicant to know what can be expected from the Board after an application is submitted.

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

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

Rule	Explanation
R4-38-107	This rule is effective as written. However, the Board is considering other options for examination to reduce burdens on Applicants.
R4-38-110	This rule is effective however needs to be updated to include Email address.
R4-38-108(A)(r)	This rule is effective however notarization of the application should be removed so to facilitate electronic applications for licensure.

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

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation
R4-38-103	The statutory Citation in this rule is incorrect due to changes in statute and must be updated.

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

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

Rule	Explanation

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

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation
R4-38-118	This rule provides ambiguity as to which period is being audited for. Changing audits from prior to renew to post renewal would make the renewal process more streamlined and also provide additional surety that CE requirements are being met.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No X

*If yes, please fill out the table below:*

Commenter	Comment	Agency's Response
N/A	N/A	N/A

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

**1998 Rulemaking**

The rules in Article 4, which deals with the application and renewal process and licensing time-frames, were made in 1998. The primary economic impact of these rules is on the Board, which is required to comply with its licensing time-frames. The rules simply explain to an applicant what can be expected from the Board regarding application processing and action. The Board reports that it complies with its time-frames.

**2003 Rulemaking**

The rules in Article 2, which deal with Dispensing of Drugs by Homeopathic Physicians, were amended in this rulemaking. The primary objective of the amendments was to eliminate repetitive language. At the time the rules were amended, the Board anticipated the changes would have very little economic impact. The Board reports that the economic impact has been minimal.

**2005 Rulemaking**

R4-38-101, Definitions; R4-38-102, Additional Requirements for Applicants Graduated from an Unapproved School of Medicine; and R4-38-114, Rehearing or Review of Decision, were last amended in this rulemaking. At the time the rules were amended, the Board anticipated the changes would have very little economic impact. The Board reports that the economic impact has been minimal.

**2010 Rulemaking**

The rules in Article 3, which deal with medical assistants, were made in this rulemaking. At the time, The Board recognized that the rules would have some economic impact. For example, a homeopathic physician who wished to register a medical assistant would incur the cost of complying with the registration procedures and supervision standards but would receive the benefit of being able to make homeopathic services available to more customers. An individual who wanted to be registered as a medical assistant would incur the cost of completing either a formal or practical educational program but would receive the benefit of becoming eligible for registration and employment. The Board believes the anticipated impact occurred. There are currently 14 registered medical assistants. Almost all medical assistants become qualified by participating in a formal education program rather than a practical education program. No practical education program was approved in 2018.

**2011 Rulemaking**

In this rulemaking, the Board amended all of the rules in Article 1, General, that were not amended in the 2005 rulemaking. Many of the rule changes resulted from statutory changes that the legislature made

in response to a Sunset Review of the Board. The Board believes the actual impact of the rules has been as anticipated.

The Board concluded that most of the economic impact on applicants and licensees resulted from legislative action rather than the rulemaking. The cost associated with obtaining 20 hours of Board-approved continuing education was estimated to be minimal because most licensees already participate in continuing education. It was expected there would be little to no economic cost associated with passing an examination as the Board charges no fee for examination. However, this is a necessary requirement to enable the Board to fulfill its obligation to protect public health and safety. The Board expected administrative costs associated with applying for and renewing licensure. However, the benefits of being licensed outweigh the costs of making application. As a result of the clarification regarding the manner in which a title must be written, it was expected that a homeopathic physician might incur the expense of having letterhead and business cards made that are in compliance. This is a necessary cost of doing business and provides the benefit of helping the homeopathic physician avoid any charge of false advertising.

The rulemaking established standards for approval of a preceptorship. However, since 1999, only three preceptorships have been approved. Applicants for licensure are required to pass a written examination.

#### 2012 Rulemaking

In this rulemaking, the Board increased the fee to renew a license from \$975 to \$1,000. The Board expected the fee increase to generate approximately \$2,100 from the 85 licensees that existed in FY11. The Board's expectation was accurate. The Board collected \$89,400 in FY11 and \$91,000 in FY13. The Board anticipates very little economic impact on a \$25.00 per year increase.

No new rulemakings have been completed since 2012.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

No analysis has been submitted.

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

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The Board drafted rules to implement statutory changes which went into effect in January of 2015. However, the Board did not ultimately complete rulemaking, as no schools currently provide the education necessary to obtain the new licensing type. The Board is reviewing this license type and considering necessary rulemaking.

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

The benefits of the rules outweigh the probable costs of the rule, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective. The rules covering the subject matter are necessary to fulfill the agency's mission.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The following rules were made after July 29, 2010, and deal, at least tangentially, with issuance of a regulatory permit, license, or agency authorization: R4-28-103, R4-28-104, R4-28-105, R4-28-107, R4-28-108, R4-28-109, and R4-28-117. The rules deal with a regulatory permit, license, or agency authorization issued to qualified individuals to conduct activities that are substantially similar in nature. The rules comply with A.R.S. § 41-1037.

14. **Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The Board will request an exemption from the rule making moratorium and expects to open a rule making package by December 2019. The purpose of the package would be to amend rules allowing the Board to do business electronically and make changes necessary to address issues indicated in items 3, 4, and 6.

## Board of Homeopathic and Integrated Medicine Examiners

## TITLE 4. PROFESSIONS AND OCCUPATIONS

## CHAPTER 38. BOARD OF HOMEOPATHIC AND INTEGRATED MEDICINE EXAMINERS

(Authority: A.R.S. § 32-2904 et seq.)

*Chapter heading amended from Board of Homeopathic Medical Examiners to Board of Homeopathic and Integrated Medicine Examiners by A.R.S. § 32-2902 as amended by Laws 2008, Ch. 57 (Supp. 10-1).*

## ARTICLE 1. GENERAL

## Section

R4-38-101.	Definitions
R4-38-102.	Additional Requirements for Applicants Graduated from an Unapproved School of Medicine
R4-38-103.	Postgraduate Requirements for Licensure
R4-38-104.	Approved Postgraduate Coursework
R4-38-105.	Approval of Preceptorship
R4-38-106.	Fees
R4-38-107.	Examination
R4-38-108.	Application for Licensure
R4-38-109.	License Renewal
R4-38-110.	Notification of Change in Contact Information
R4-38-111.	Experimental Forms of Diagnosis and Treatment
R4-38-112.	Peer Review
R4-38-113.	Chelation Therapy Practice Requirements
R4-38-114.	Rehearing or Review of Decision
R4-38-115.	Use of Title and Abbreviation
R4-38-116.	Continuing Education Requirement
R4-38-117.	Application For Continuing Education Approval
R4-38-118.	Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement

## ARTICLE 2. DISPENSING OF DRUGS BY HOMEOPATHIC PHYSICIANS

## Section

R4-38-201.	Definitions
R4-38-202.	General Provisions
R4-38-203.	Repealed
R4-38-204.	Repealed
R4-38-205.	Repealed
R4-38-206.	Packaging

## ARTICLE 3. EDUCATION, SUPERVISION, AND DELEGATION STANDARDS FOR REGISTRATION OF MEDICAL ASSISTANTS BY HOMEOPATHIC PHYSICIANS

## Section

R4-38-301.	Definitions
R4-38-302.	Requirements to Supervise a Medical Assistant; Standards for Supervision
R4-38-303.	Board Standards for a Formal Education Program
R4-38-304.	Approved Practical Education Program; Renewal
R4-38-305.	Minimum Requirements for Registration of a Homeopathic Medical Assistant
R4-38-306.	Application to Register a Medical Assistant
R4-38-307.	Additional Requirements to Register a Previously Licensed Health Care Practitioner
R4-38-308.	Renewal of Medical Assistant Registration
R4-38-309.	Restrictions on Delegated Procedures
R4-38-310.	Registration Not Transferable; Multiple Employers
R4-38-311.	Responsibilities of a Registered Medical Assistant
R4-38-312.	Unprofessional Conduct

## ARTICLE 4. APPLICATION AND RENEWAL PROCESS; TIME-FRAMES

*Article 4, consisting of Sections R4-38-401 thru R4-38-403, adopted effective September 24, 1998 (Supp. 98-3).*

## Section

R4-38-401.	Definitions
R4-38-402.	Application; Initial License, Permit, or Registration
R4-38-403.	Application; Renewal of License, Permit, or Registration

## ARTICLE 1. GENERAL

## R4-38-101. Definitions

In addition to the definitions at A.R.S. § 32-2901, in this Chapter:

1. "Beneficial clinical usage" means that usage results of a therapy modality or treatment are documented by:
  - a. Clinical reports from national or international organizations;
  - b. Professionally recognized publications of clinical indications and contraindications;
  - c. National or international instructional courses providing training in the use of the therapy modality, or treatment; or
  - d. Professional peer review presentations of physicians' usage results with the therapy modality or treatment at local, county, state, national or international meetings.
2. "Classical homeopathy" means a system of medical practice expounded by Samuel Hahnemann in the *Organon of Medicine* that treats a disease by the administration of minute doses of a remedy that would in healthy persons produce symptoms of the disease treated.
3. "Complex homeopathy" means a system of medical practice that combines one or more homeopathic remedies that are not described in the *Organon of Medicine*.
4. "EAV" means electric acupuncture according to Reinhard Voll.
5. "Fifth Pathway program" means an academic program created by the Council on Medical Education of the American Medical Association specifically for American medical students studying abroad.
6. "Generally accepted experimental criteria in homeopathy" means:
  - a. A protocol in which a therapy modality or treatment is administered in the smallest amount necessary to stimulate a healing response with a minimum of clinical aggravation of symptoms or side effects;
  - b. A process of recording the clinical efficacy of a therapy modality or treatment reflected by measurements of symptom aggravation or improvement, laboratory testing, and changes in physiologic functioning; or
  - c. A process by which innovative diagnostic procedures and devices are analyzed and evaluated according to their ability to assist a physician in assessing the degree of electrical resistance or conduction disturbance in the totality of a patient's presenting signs, symptoms, and physiologic responses

- and predict or monitor the totality of the patient's responses to a therapy modality or treatment.
7. "Homeopathic indication" means a recognized standard of practice of homeopathic practitioners that describes a sign, symptom, and physical finding that leads to the recommendation of a particular substance or therapeutic procedure.
  8. "Metal poisoning" means a level of toxic metals present in a patient that in the professional judgment of a licensee is inconsistent with the patient's ability to achieve optimal health.
  9. "Proving method of administration" means testing a homeopathic drug on healthy volunteers by recording, compiling, and organizing symptoms that are developed into a repertory.
  10. "Repertory" means a compilation, usually in book form, of information categorized by the different systems of the body and providing an index of symptoms and a listing of corresponding homeopathic remedies.
  11. "Rubric" means a guiding symptom leading to a homeopathic remedy.

#### Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Heading amended effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2).

#### R4-38-102. Additional Requirements for Applicants Graduated from an Unapproved School of Medicine

In addition to the requirements for a license prescribed in A.R.S. § 32-2912, an applicant who has not graduated from an approved school of medicine shall meet the following:

1. Hold a standard certificate issued by the Educational Council for Foreign Medical Graduates; or
2. Complete a Fifth Pathway program of one academic year of supervised clinical training under the direction of an approved school of medicine in the United States and upon completion of the Fifth Pathway program complete a 24-month internship, residency, or clinical fellowship program accredited by the Accreditation Council on Graduate Medical Education (ACGME).

#### Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2).

#### R4-38-103. Postgraduate Requirements for Licensure

Under A.R.S. § 32-2912(F)(3), an applicant for licensure shall:

1. Have a degree of doctor of medicine in homeopathy issued by a homeopathic college or other Board-approved educational institution, or
2. Have successfully completed:
  - a. Formal postgraduate courses approved under R4-38-104, or
  - b. A preceptorship approved under R4-38-105.

#### Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-103 renumbered to R4-38-104; new Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

#### R4-38-104. Approved Postgraduate Coursework

A. An applicant who seeks licensure based on successful completion of formal postgraduate courses shall:

1. Complete at least 300 hours of formal postgraduate courses in one or more of the treatment modalities specified in subsections (C)(1) through (6);
  2. Ensure that at least 40 of the 300 required hours are in a course of classical homeopathy; and
  3. Submit with the application required under R4-38-108 a statement from the sponsor of the formal postgraduate course that includes:
    - a. The applicant's name,
    - b. The name of the course sponsor,
    - c. The dates on which the course was taken,
    - d. A brief description of the course content,
    - e. The number of hours completed, and
    - f. Whether the applicant successfully completed the course.
- B. The Board shall approve a formal postgraduate course if the Board determines that:
1. Except as provided in subsection (B)(4), the course content provides training in one or more of the treatment modalities specified in subsections (C)(1) through (6).
  2. There is evidence that the course instructor is qualified in the subject matter of the course; and
  3. The course sponsor is recognized within the homeopathic, osteopathic, or allopathic medical profession as a provider of postgraduate training and continuing education; or
  4. An applicant who has completed postgraduate coursework in treatment modalities not specified in subsections (C)(1) through (6) shall submit evidence of the postgraduate coursework with the application sufficient to enable the Board to determine whether the postgraduate coursework is related to the practice of homeopathic medicine as defined in statute.
- C. An applicant who wishes to practice a specific treatment modality listed in subsections (C)(1) through (6) shall demonstrate proficiency in the modality by completing the indicated number of postgraduate course hours or certification by the indicated credentialing authority.
1. Acupuncture:
    - a. Classical acupuncture:
      - i. Certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), or
      - ii. Completing at least 220 hours of postgraduate courses recognized by the American Academy of Medical Acupuncture or other sponsor approved by the Board that provides equivalent training.
    - b. Electro-diagnosis: Completing at least 50 hours of postgraduate courses in electro-diagnosis that are approved by the Board.
  2. Chelation therapy: Completing at least 16 hours of postgraduate courses offered by the American Board of Clinical Metal Toxicology, American College of Alternative Medicine, International College of Integrative Medicine, or the American Academy of Environmental Medicine or other sponsor approved by the Board that provides equivalent training.
  3. Classical homeopathy: Completing at least 90 hours of formal postgraduate courses in classical homeopathy approved by the Board, or whose sponsor is recognized by the Council on Homeopathic Education, the American Institute of Homeopathy, the American Board of Homeotherapeutics, the Homeopathic Association of Naturopathic Physicians or the Council for Homeopathic Certification.

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4. Complex homeopathy and electro-therapeutics, EAV and related: Completing at least 90 hours of formal postgraduate courses in complex homeopathy approved by the Board, or whose sponsor is recognized by the Council on Homeopathic Education, the American Institute of Homeopathy, the American Board of Homeotherapeutics, the Homeopathic Association of Naturopathic Physicians, or the Council for Homeopathic Certification.
5. Neuromuscular integration:
  - a. Completing a residency or fellowship in physical medicine or graduation from an osteopathic medical school; or
  - b. Completing at least 220 hours of formal postgraduate courses in neuromuscular integration therapies that are approved by the Board.
6. Orthomolecular therapy and nutrition: completing at least 300 hours of postgraduate courses in orthomolecular therapy and nutrition approved by the Board.

**Historical Note**

Adopted effective February 22, 1988 (Supp. 88-1). Amended effective January 27, 1995. Amended effective February 7, 1995 (Supp. 95-1). Amended effective November 12, 1996 (Supp. 96-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-104 renumbered to R4-38-105; new R4-38-104 renumbered from R4-38-103 and amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

**R4-38-105. Approval of Preceptorship**

- A. An applicant who seeks licensure based on successful completion of a preceptorship shall obtain the Board's approval of the preceptorship by submitting the following with the application required under R4-38-108:
  1. A notarized affidavit from each preceptor on the preceptor's letterhead attesting to:
    - a. The educational qualifications of the preceptor,
    - b. The number of years the preceptor has been conducting preceptorships;
    - c. The dates of the preceptorship,
    - d. An outline of the training conducted,
    - e. Which of the treatment modalities listed in A.R.S. § 32-2901(22) were involved in the training,
    - f. The number of hours of didactic and clinical training in each treatment modality, and
    - g. The general nature of the services performed during the training; and
  2. A summary from the applicant of each preceptorship including:
    - a. The name of each preceptor,
    - b. The treatment modalities included in each preceptorship, and
    - c. The total number of hours claimed instead of formal postgraduate courses.
- B. The Board shall approve a preceptorship under this Section if the Board determines that:
  1. The preceptorship provides training in one or more of the treatment modalities specified in R4-38-104;
  2. The preceptorship involves a balance of didactic and clinical training;
  3. The preceptor has been in full-time clinical practice for at least three years and meets the educational requirements of R4-38-302(C) in the treatment modality being precepted; and
  4. If the preceptorship involves training in classical homeopathy, the preceptorship includes case-taking, repertory

use, materia medica, philosophy and history of homeopathy, acute remedies, constitutional prescribing, posology, homeopathy prescription policy, and remedy handling policy.

**Historical Note**

Adopted effective June 3, 1988 (Supp. 88-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Amended by emergency rulemaking at 12 A.A.R. 4894, effective December 4, 2006 for 180 days (Supp. 06-4). Emergency expired. Amended by final rulemaking at 13 A.A.R. 2924, effective August 7, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1). Former R4-38-105 renumbered to R4-38-106; new R4-38-105 renumbered from R4-38-104 and amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

**R4-38-106. Fees**

- A. The Board establishes and shall collect the following fees, which are specifically authorized by A.R.S. § 32-2914:
  1. Application for license: \$550.00
  2. Issuance of initial license: \$250.00
  3. Annual renewal of license: \$1000.00
  4. Late renewal penalty: \$350.00
  5. Application for dispensing permit: \$200.00
  6. Annual renewal of dispensing permit: \$200.00
  7. Locum tenens registration application: \$200.00
  8. Locum tenens registration issuance: \$100.00
  9. Application for approval of a practical education program: \$150.00
  10. Annual renewal of approval of a practical education program: \$50.00
  11. Initial application to register a medical assistant: \$200.00
  12. Annual renewal of registration of medical assistant: \$200.00
- B. The Board shall collect the following amounts for the services described:
  1. Annual directory: \$25.00
  2. Copies, per page: \$0.25
  3. Copies, per audio tape: \$35.00
  4. Copies, per 1.44 M computer disk: \$100.00
  5. Mailing lists - non-commercial (per name): \$0.05
  6. Mailing lists - commercial (per name): \$0.25
  7. Mailing list labels (per name): \$0.30
  8. Copy of statutes or rules: \$5.00

**Historical Note**

Adopted effective June 3, 1988 (Supp. 88-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-106 renumbered to R4-38-107; new R4-38-106 renumbered from R4-38-105 by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3). Amended by final rulemaking at 18 A.A.R. 2143, effective October 7, 2012 (Supp. 12-3).

**R4-38-107. Examination**

- A. The examination for a license consists of two parts:
  1. A timed written examination that includes questions addressing the treatment modalities listed in A.R.S. § 32-2901(22). To pass the written examination, an applicant shall obtain a score of at least 70 percent; and
  2. A personal interview with the Board to examine an applicant's personal and professional history as it applies to homeopathic medicine. The Board may ask questions to clarify issues regarding the applicant's competence to

engage in the practice of medicine safely, unprofessional conduct in the applicant's professional record, and whether the scope of the applicant's practice falls within the scope of homeopathic medicine as defined at A.R.S. § 32-2901(22).

- B.** An applicant may use a copy of Kent's Repertory as a reference during the written examination. An applicant shall not use a computer or other written material during the written examination.

#### Historical Note

Adopted effective June 13, 1988 (Supp. 88-2). Amended effective February 7, 1995 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Section repealed; new R4-38-107 renumbered from R4-38-106 and amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

#### R4-38-108. Application for Licensure

- A.** To apply for licensure, an applicant shall submit the following directly to the Board:

1. An application form that contains the following information about the applicant:
  - a. Name as the applicant wants the name to appear on a license;
  - b. Social Security number, as required under A.R.S. §§ 25-320(P) and 25-502(K);
  - c. Date and place of birth;
  - d. Personal identifying characteristics including gender, weight, height, eye and hair colors, and any identifying marks;
  - e. Business name and address;
  - f. Residential address;
  - g. Business telephone and fax numbers;
  - h. E-mail address;
  - i. Date on which the applicant expects to take the written examination required under A.R.S. § 32-2913;
  - j. Name of the approved medical school from which the applicant obtained an allopathic or osteopathic medical degree and the date of the degree;
  - k. Name of the hospital program at which the applicant served as an intern and the years of the internship;
  - l. Names and addresses of three physicians who will send the Board letters of recommendation for the applicant;
  - m. List of the states or other jurisdictions in which the applicant is or ever has been licensed to practice medicine;
  - n. List of specialty colleges of which the applicant is a member;
  - o. List of specialty boards by which the applicant is certified;
  - p. List of the places where the applicant has practiced medicine and the dates of practice;
  - q. Statement indicating whether the applicant:
    - i. Has, within the last 10 years, had a medical malpractice judgment entered against an applicant or settled a malpractice claim against the applicant;
    - ii. Has ever been convicted of or pled guilty or nolo contendere to a criminal charge in an adult court of record;
    - iii. Has been charged with a crime that is pending adjudication in an adult court of record;
    - iv. Has had a state or other jurisdiction refuse or deny the applicant a license to practice medicine or has allowed the applicant to withdraw a license application instead of being refused or denied a license to practice medicine;

cine or has allowed the applicant to withdraw a license application instead of being refused or denied a license to practice medicine;

- v. Has had a state or other jurisdiction take disciplinary action against the applicant's license to practice medicine including placing the license on probation, suspending the license, limiting or restricting the license, revoking the license, or accepting surrender of the license;
- vi. Has had a state or other jurisdiction, including a federal agency, suspend, limit, restrict, revoke, deny, or accept surrender in lieu of action of the applicant's registration to possess, dispense, or prescribe controlled substances;
- vii. Has or had, within the last 10 years, a mental illness or psychological condition that impaired the applicant's ability to practice medicine or function as a medical student;
- viii. Is now or has been within the last 10 years dependent upon alcohol or drugs; and
- ix. Has had a specialty board or college suspend, revoke, or deny certification to the applicant.

- r. Notarized signature and attestation that the information provided is true, correct, and complete;
2. A summary listing the course title, sponsor, dates attended, and credit hours and evidence of completing the 300 hours of postgraduate coursework required under R4-38-104 or the preceptorship required under R4-38-105;
3. If the answer to any item in subsections (A)(1)(q)(i) through (ix) is yes, detailed information regarding the nature, date, and location of the incident, or the nature of the condition, and the identity of the agency, court, or organization involved, action taken, and current status;
4. An Arizona Statement of Citizenship and documentary evidence of U.S. citizenship or qualified alien status;
5. A list of the homeopathic modalities the applicant intends to make available under the applicant's supervision if the applicant is licensed;
6. If the applicant intends to use an experimental form of diagnosis or treatment in the applicant's homeopathic medical practice, a copy of the written informed consent materials that a patient will sign before examination or treatment;
7. Two photographs of the applicant's face taken within the last 60 days;
8. A copy of the membership card provided by a specialty college of which the applicant is a member;
9. A copy of the certification card provided by a specialty board by which the applicant is certified;
10. A completed and signed form authorizing individuals, organizations, previous employers, and schools to release to the Board information regarding the applicant;
11. A current curriculum vitae that includes all professional activity from medical school to the present; and
12. The license application fee specified in R4-38-106.

- B.** An applicant for licensure shall ensure that the following information is submitted directly to the Board:

1. Verification of graduation provided by the allopathic or osteopathic medical college from which the applicant graduated;
2. Letters of recommendation, on professional letterhead and notarized, from three licensed physicians; and
3. Verification of licensure from every jurisdiction in which the applicant is or ever has been licensed to practice medicine.

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**Historical Note**

Adopted effective June 13, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-108 renumbered to R4-38-110; new Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

**R4-38-109. License Renewal**

- A.** The Board shall provide a licensee with at least 30 days' notice of the need to renew the licensee's license. It is the responsibility of the licensee to renew timely. Failure to receive notice of the need to renew does not excuse failure to renew timely.
- B.** Under A.R.S. § 32-2915(G), a licensee who wishes to continue practicing homeopathic medicine shall submit the license renewal materials described in subsection (E) annually on or before the last day of the month in which the license was initially issued.
- C.** A licensee who fails to comply with subsection (E) by the date specified in subsection (B) may apply for license renewal within 60 days after the date specified in subsection (B) by:
1. Submitting to the Board the license renewal materials described in subsection (E), and
  2. Paying the late renewal penalty prescribed in R4-38-106.
- D.** If a licensee fails to comply with either subsection (B) or (C), the licensee's license expires and the licensee shall immediately cease practicing homeopathic medicine. A licensee whose license expires may obtain licensure only by complying again with R4-38-108 and taking the examination specified in R4-38-107.
- E.** To renew a license issued by the Board, a licensee shall submit the following directly to the Board:
1. A license renewal application that contains the following information about the applicant:
    - a. Name;
    - b. License number;
    - c. Business name and address;
    - d. Residential address;
    - e. Business telephone number;
    - f. E-mail address;
    - g. Address and telephone numbers of each location at which the licensee practices;
    - h. Number of the active M.D. or D.O. license held by the licensee and name of the state that issued the license; and
    - i. A statement indicating whether during the last 12 months:
      - i. A licensing authority of another jurisdiction denied the licensee a license to practice allopathic, homeopathic, or osteopathic medicine and if so, the name of the jurisdiction, date of the denial, and an explanation of the circumstances;
      - ii. A licensing authority of another jurisdiction revoked, suspended, limited, restricted, or took other action regarding a license of the licensee and if so, the name of the jurisdiction taking action, nature and date of the action taken, and an explanation of the circumstances;
      - iii. The licensee has been convicted of or pled guilty or nolo contendere to a criminal charge, including driving under the influence of drugs or alcohol, and if so, the name of the jurisdiction in which convicted, nature of the crime, date of conviction, and current status;
      - iv. A lawsuit was filed or settlement entered into or judgment entered against the licensee alleging professional malpractice or negligence in

the practice of homeopathic, allopathic, or osteopathic medicine and if so, the case number, date of action, the matters alleged, and whether the lawsuit is still pending or the manner in which the settlement or judgment was resolved; and

- v. The licensee has or had a mental illness or psychological condition that may impair the licensee's ability to practice homeopathic medicine safely and skillfully and if so, the nature of the condition and any accommodations necessary;
  - vi. The licensee has been charged with or arrested for any felony or misdemeanor involving conduct that may affect patient safety or a felony as required under A.R.S. § 32-3208.
2. A list of the treatment modalities the licensee makes available under the licensee's supervision;
  3. If the licensee uses an experimental form of diagnosis or treatment in the licensee's practice of medicine, a copy of the written informed consent materials that a patient signs before examination or treatment;
  4. A list of any specialty certifications held by the licensee, the certifying entity, and the date the certification expires;
  5. If the licensee dispenses drugs or devices as part of the licensee's practice of homeopathic medicine:
    - a. The licensee's DEA registration number;
    - b. A statement of whether a complaint has been filed or legal action has been taken against the licensee by a court or federal or state agency for dispensing a device, drug, or substance and if so, the name and address of the court or federal or state agency and documentation of the action taken; and
    - c. A list of the items dispensed;
  6. An Arizona Statement of Citizenship and documentary evidence of U.S. citizenship or qualified alien status;
  7. An affirmation that the licensee has completed the continuing education required under A.R.S. § 32-2915;
  8. An affirmation that the licensee is in compliance with A.R.S. § 32-3211 regarding medical records;
  9. The license renewal fee prescribed under R4-38-106; and
  10. The licensee's dated signature affirming that the information provided is true, correct, and complete.

**Historical Note**

Adopted effective June 13, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-109 renumbered to R4-38-111; new Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

**R4-38-110. Notification of Change in Contact Information**

The Board shall communicate with a licensee using the most recent contact information provided to the Board. To ensure timely communication from the Board, a licensee shall advise the Board in writing within 45 days of opening an additional office or a change in name, office or residential address, or telephone number.

**Historical Note**

Adopted effective June 3, 1988 (Supp. 88-2). Section repealed by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). New R4-38-110 renumbered from R4-38-108 and amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

**R4-38-111. Experimental Forms of Diagnosis and Treatment**

**A.** The Board neither approves nor advocates specific experimental therapies. The Board considers the standards in this Section

in determining whether a licensee is in compliance with A.R.S. § 32-2933(27). The Board considers a therapy that is in violation of applicable state or federal statutes, or state or federal rules or regulations regarding drugs and devices to be unprofessional conduct under A.R.S. § 32-2933(27).

- B.** Experimental forms of diagnosis or treatment, within the meaning of A.R.S. § 32-2933(27), include:
1. Administration of a pharmaceutical agent untested for safety in humans;
  2. Use of a physical agent or electromagnetic current or field in a manner not supported by established clinical usage; and
  3. Therapy modalities and diagnostic methods that are not included in the practice of homeopathic medicine as defined in A.R.S. § 32-2901(22) and do not meet the criteria of subsection (C).
- C.** The following are not an experimental form of diagnosis or treatment under A.R.S. § 32-2933(27):
1. A substance or therapy modality administered on a homeopathic indication that has been in beneficial clinical usage by professionally trained, legally qualified physicians for at least 10 years;
  2. Homeopathic medications listed in the Homeopathic Pharmacopoeia of the United States;
  3. Homeopathic medications that have been characterized by toxicity studies or by the “proving” method of administration on healthy volunteers to determine the medication’s spectrum of action;
  4. Administration of a pharmaceutical agent for a therapeutic indication supported by clinical usage if the agent is approved to be marketed publicly for other therapeutic indications by the appropriate regulatory agency; and
  5. A procedure used for patient education, preventative medicine, or general health assessment or enhancement such as bio-terrain analysis, live blood analysis, soft laser, magnetic therapy, oxidative therapy, and microelectric therapy, and other procedures considered by the Board to be in beneficial clinical usage.

#### Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-111 renumbered to R4-38-112; new R4-38-111 renumbered from R4-38-109 by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

#### R4-38-112. Peer Review

- A.** A licensee using an experimental form of diagnosis and treatment such as vaccine therapy for cancer without affiliation with a recognized research institution, institutional review board, or peer review committee may request or the Board may require review of the procedure by the Board or a Board-appointed peer review committee.
- B.** In conducting the review, the Board or Board-appointed peer review committee shall examine protocols, recordkeeping, analyses of results, and informed patient consent forms and procedures. Based on the review, the Board shall determine the licensee’s compliance with generally accepted homeopathic experimental criteria under A.R.S. § 32-2933(27).
- C.** As used in A.R.S. § 32-2933(27), “periodic review by a peer review committee” means peer review for compliance with any form of experimental medicine occurs at a minimum of five-year intervals through a recognized research institution, institutional review board, or a peer review committee. The chairperson of a Board-appointed peer review committee shall

be appointed by the Board president and approved by the Board.

- D.** During a review of a licensee’s use of experimental forms of diagnosis and treatment or at any other time the Board deems appropriate, the licensee shall submit informed patient consent forms and protocols and other records indicating the licensee’s compliance with generally accepted experimental criteria designated in A.R.S. § 32-2933(27).

#### Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Section repealed; new R4-38-112 renumbered from R4-38-111 by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

#### R4-38-113. Chelation Therapy Practice Requirements

- A.** Before a licensee may practice chelation therapy for other than the treatment of metal poisoning, the licensee:
1. Shall document completion of the postgraduate education required in R4-38-104(C)(2); and
  2. Submit to and obtain approval from the Board of the informed patient consent form required by A.R.S. § 32-2933(27). As part of the documentation submitted with the informed patient consent form, the licensee shall include a copy of the chelation therapy protocol.
- B.** A licensee shall ensure that detailed records and periodic analysis of results on patients consistent with the most recent informed consent and protocol on file with the Board are maintained consistent with A.R.S. § 32-2933(27) and available for periodic review by a peer review committee designated by the Board. The licensee shall ensure that retention of patient medical and treatment records conform to the requirements of A.R.S. § 32-2936.

#### Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Amended effective February 7, 1995 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

#### R4-38-114. Rehearing or Review of Decision

- A.** Except as provided in subsection (G), any party to an appealable agency action or a contested case before the Board who is aggrieved by a decision rendered in the case may file with the Board not later than 30 days after service of the decision, a written motion for rehearing or review of the decision, specifying the particular grounds for the motion. A decision is served when personally delivered or five days after the date the decision is mailed to the party at the party’s last known residence or place of business.
- B.** A motion for rehearing may be amended at any time before a ruling by the Board. Any other party may file a response within 15 days after the motion or amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C.** The Board may grant a rehearing or review of the decision for any of the following reasons materially affecting the moving party’s rights:
1. Irregularity in the administrative proceedings of the Board or the hearing officer, or any order or abuse of discretion that results in the moving party being deprived of a fair hearing;
  2. Misconduct of the Board or the non-moving party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;

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4. Newly discovered material evidence that with reasonable diligence could not have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
  7. The decision is not justified by the evidence or is contrary to law.
- D.** The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters.
- E.** Not later than 30 days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting the rehearing shall specify the grounds for the rehearing.
- F.** When a motion for rehearing is based upon an affidavit the party shall serve the affidavit with the motion. Within 10 days after service, an opposing party may serve an opposing affidavit. The Board may extend the period to serve an opposing affidavit for an additional 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- G.** If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the immediate preservation of the public peace, health, or safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.
- H.** The terms "contested case" and "party" as used in this Section are defined in A.R.S. § 41-1001. The term "appealable agency action" is defined in A.R.S. § 41-1092.

**Historical Note**

Adopted effective June 3, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2).

**R4-38-115. Use of Title and Abbreviation**

- A.** The use of the abbreviation "M.D.(H.)" or "D.O.(H.)" (with or without periods), is equivalent to the written designation, "Doctor of Medicine (Homeopathic)" or "Doctor of Osteopathy (Homeopathic)."
- B.** A homeopathic physician practicing in this state who is not licensed by the Arizona Board of Medical Examiners or the Arizona Board of Osteopathic Examiners in Medicine and Surgery shall not use any designation other than the initials M.D.(H.) or D.O.(H.) (with or without periods) to indicate a doctoral degree.
- C.** A physician licensed by the Board and the Arizona Board of Medical Examiners or the Board and the Arizona Board of Osteopathic Examiners in Medicine and Surgery shall use M.D., M.D.(H.) or D.O., D.O.(H.) as appropriate (with or without periods).
- D.** A licensee practicing in this state shall display the license issued by the Board or an official duplicate of the license in a

conspicuous location in the reception area of each office facility.

**Historical Note**

Adopted effective January 27, 1995 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

**R4-38-116. Continuing Education Requirement**

- A.** Under A.R.S. § 32-2915(F), a licensee shall complete at least 20 hours of Board-approved continuing education in the 12 months before submitting the license renewal materials required under R4-38-109. If a licensee completes more than 20 hours of continuing education during a year, the licensee shall not report the extra hours in a subsequent year.
- B.** A licensee shall ensure that the licensee obtains and maintains for two years documentary evidence of complying with the continuing education requirement.
- C.** An hour of continuing education consists of 60 minutes of participation unless specified otherwise in subsection (D).
- D.** The following continuing education programs and activities are approved by the Board and do not require an application under R4-38-117:
1. Participating in an internship, residency, or fellowship at a teaching institution approved by the American Medical Association, Association of American Medical Colleges, or American Osteopathic Association. A licensee may claim one credit hour of continuing education for each day of training in a full-time approved program, or for a less than full-time training on a pro-rata basis. For purposes of this subsection, teaching institutions define "full-time";
  2. Participating in an education program for an advanced degree in a medical or medically-related field in a teaching institution approved by the American Medical Association, Association of American Medical Colleges, or American Osteopathic Association. A licensee may claim one credit hour of continuing education for each one day of full-time study or less than a full-time study on a pro rata basis. For purposes of this subsection, teaching institutions define "full-time";
  3. Participating in full-time research in a teaching institution approved by the American Medical Association, Association of American Medical Colleges, or American Osteopathic Association. A licensee may claim one credit hour of continuing education for each one day of full-time research, or less than full-time research on a pro rata basis. For purposes of this subsection, teaching institutions define "full-time";
  4. An educational program certified as Category 1 by an organization accredited by the Accreditation Council for Continuing Medical Education or the American Osteopathic Association;
  5. A medical education program designed to provide understanding of current developments, skills, procedures, or treatments related to the practice of medicine and provided by an organization or institution accredited by the Accreditation Council for Continuing Medical Education or the American Osteopathic Association; and
  6. A homeopathic medical education course approved or offered by the Council on Homeopathic Education.
- E.** The following activities are approved by the Board as continuing education and do not require an application under R4-38-117 subject to the specified limitations:

1. Serving as an instructor of medical students, house staff, other physicians, or allied health professionals from a hospital or other health care institution if serving as an instructor provides the licensee with an understanding of current developments, skills, procedures, or treatments related to the practice of allopathic, osteopathic, or homeopathic medicine. A licensee who serves as an instructor:
    - a. May claim one hour of continuing education for each hour of instruction up to a maximum of 10 hours, and
    - b. If the licensee teaches substantially the same class more than once, may claim hours of continuing education only for the first time the class is taught;
  2. Publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of allopathic, osteopathic, or homeopathic medicine. A licensee who publishes or presents a paper, report, or book:
    - a. May claim one hour of continuing education for each hour preparing, writing, and presenting up to a maximum of 10 hours; and
    - b. May claim hours of continuing education only after the date of publication or presentation; and
  3. Participating in the following activities if the participation provides the licensee with an understanding of current developments, skills, procedures, or treatments related to the practice of allopathic, osteopathic, or homeopathic medicine. A licensee may claim one hour of continuing education for each hour of participation in the following activities up to a maximum of six hours:
    - a. Completing a self-instructed medical education program through the use of videotape, audiotape, film, filmstrip, radio broadcast, or computer;
    - b. Reading scientific journals and books;
    - c. Preparing for and obtaining specialty board certification or recertification; and
    - d. Participating on a staff or quality of care committee or utilization review committee in a hospital, health care institution, or government agency.
- F.** The Board shall approve a program or activity note listed in subsection (D) or (E) as continuing education if the provider of the program or activity makes application under R4-38-117 and the Board determines that the program or activity:
1. Is designed to provide the participant with:
    - a. Understanding of current developments, procedures, or treatments related to the practice of homeopathic medicine as defined at A.R.S. § 32-2901(22);
    - b. Knowledge and skills used to practice homeopathic medicine safely and competently; or
    - c. Knowledge and skills related directly or indirectly to patient care including practice management, medical ethics, or language necessary to the patient population served;
  2. Includes a method by which the participant evaluates the:
    - a. Stated objectives of the program or activity,
    - b. Instructor knowledge and teaching ability,
    - c. Effectiveness of the teaching methods used, and
    - d. Usefulness or applicability of the information provided; and
  3. Provides the participant with a certificate of attendance that shows the:
    - a. Name of the participant;
    - b. Name of the approved continuing education;
    - c. Name of the continuing education provider;
    - d. Date, time, and location of the continuing education; and
    - e. Hours of instruction provided.
- G.** Except as specified in subsection (H), a licensee who fails to comply with subsection (A) may submit to the Board a notice of 60-day extension. The licensee shall submit the notice of 60-day extension no later than the date indicated in R4-38-109(B). If a licensee who submits a notice of 60-day extension fails to comply with the continuing education requirement and submit the affirmation required by R4-38-109(E)(7) within the extension period, the licensee's license expires and the licensee shall immediately cease practicing homeopathic medicine. A licensee whose license expires may obtain licensure only by complying again with R4-38-108 and taking the examination specified in R4-38-107.
- H.** If a licensee fails to comply with subsection (A) because of disability, military service, absence from the U.S., or other circumstance beyond the control of the licensee, the licensee may submit to the Board a request for a temporary waiver of the continuing education requirement that includes the reason for noncompliance, the number of hours of continuing education completed, and the amount of time requested for the licensee to complete the continuing education requirement. The licensee shall submit the request for temporary waiver no later than the date specified in R4-38-109(B). The Board shall evaluate the request for temporary waiver and provide written notice to the licensee of the time within which the licensee shall comply with subsection (A).

#### Historical Note

New Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

#### R4-38-117. Application for Continuing Education Approval

- A.** To obtain Board approval of a continuing education under R4-38-116(F), the provider of the continuing education shall submit the following to the Board at least 10 days before the meeting at which the Board will consider the continuing education for approval:
1. An application for approval, using a form available from the Board, which contains the following information:
    - a. Title of the continuing education;
    - b. Name and address of the continuing education provider;
    - c. Name and telephone and fax numbers of the contact person for the continuing education provider;
    - d. Date, time, and place at which the continuing education will be taught, if known;
    - e. Subject matter of the continuing education;
    - f. Objective of the continuing education;
    - g. Method of instruction; and
    - h. Number of continuing education hours requested; and
  2. The following documents:
    - a. Curriculum vitae of the continuing education instructor,
    - b. Detailed outline of the continuing education,
    - c. Agenda for the continuing education showing hours of instruction and subject matter taught in each hour,
    - d. Method by which participants will evaluate the continuing education, and
    - e. Certificate of attendance that meets the requirements of R4-38-116(F)(3).
- B.** A provider of continuing education shall not advertise that a continuing education is approved until the Board approves the application submitted under subsection (A).

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- C. The Board's approval of a continuing education is valid for one year or until there is a change in subject matter, instructor, or hours of instruction. At the end of one year or when there is a change in subject matter, instructor, or hours of instruction, the provider of the continuing education shall reapply for approval.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

**R4-38-118. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement**

- A. When notice of the need to renew a license is provided under R4-38-109(A), the Board shall also provide notice of an audit of continuing education records to a random sample of licensees.
- B. A licensee who is notified of a continuing education audit shall submit documentary evidence of compliance with the continuing education requirement at the same time that the licensee submits the renewal application required under R4-38-109(E).
- C. If a licensee subject to a continuing education audit fails to submit the required evidence no later than the date specified in R4-38-109(C), the licensee is considered to have committed an act of unprofessional conduct and is subject to probation or license suspension or revocation.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

**ARTICLE 2. DISPENSING OF DRUGS BY HOMEOPATHIC PHYSICIANS****R4-38-201. Definitions**

In addition to the definitions in A.R.S. §§ 32-2901, 32-2933, and 32-2951, the following definitions apply in this Chapter:

1. "Administer" means the direct application of a controlled substance, prescription-only drug, dangerous drug as defined in A.R.S. § 13-3401, narcotic drug as defined in A.R.S. §13-3401, homeopathic medication, natural substance, or non-prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by a homeopathic physician, a homeopathic physician's nurse or assistant, or by the patient or research subject at a homeopathic physician's direction.
2. "Label" means a display of written, printed, or graphic matter on the immediate container of an article and, on the outside wrapper or container, if the display on the immediate wrapper or container is not easily legible through the outside wrapper.
3. "Labeling" means all labels and other written, printed, or graphic matter:
  - a. On an article or any of its containers or wrappers and
  - b. Accompanying the article.
4. "Manufacturer" means each person who prepares, derives, produces, compounds, processes, packages or repackages, or labels a drug in a place devoted to manufacturing the drug, but does not include a pharmacy, pharmacist, or physician.
5. "Natural substance" means an herbal phytotherapeutic or oxygen, carbon, or nitrogen-based therapeutic agent, vitamin, mineral, or food-factor concentrate isolated from animal, vegetable, or mineral sources for nutritional augmentation.
6. "Official compendium" means the latest revisions of the Pharmacopoeia of the United States and the Homeopathic

Pharmacopoeia of the United States, the latest revision of the National Formulary, or any current supplement.

7. "Packaging" means the act or process of placing a drug in a container to dispense or distribute the drug.
8. "Pharmaceutical drug" means a drug intended for use in preventing or curing disease or relieving pain.

**Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Amended by final rulemaking at 9 A.A.R. 1599, effective July 5, 2003 (Supp. 03-2).

**R4-38-202. General Provisions**

- A. A homeopathic physician shall not dispense unless the physician obtains from the Board a permit to dispense. The physician may renew the permit annually at the same time the license is renewed. The physician shall include the following on the permit application or renewal form:
1. The classes of drugs the physician will dispense, including controlled substances, pharmaceutical drugs, homeopathic medications, prescription-only drugs, natural substances, non-prescription drugs defined in A.R.S. § 32-1901(46), and devices defined in A.R.S. § 32-1901(18);
  2. The location where the physician will dispense; and
  3. A copy of the physician's current Drug Enforcement Administration (DEA) registration, or an affidavit averring that the physician does not possess a DEA registration and that the physician will not prescribe or dispense controlled substances.
- B. If a homeopathic physician determines that a shortage exists in a controlled substance maintained for dispensing, the physician shall immediately notify the Board, the local law enforcement agency, and the Department of Public Safety by telephone. The physician shall also provide written notification to the Board within seven days of the date of the discovery of the shortage.

**Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Amended by final rulemaking at 9 A.A.R. 1599, effective July 5, 2003 (Supp. 03-2).

**R4-38-203. Repealed****Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 1599, effective July 5, 2003 (Supp. 03-2).

**R4-38-204. Repealed****Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 1599, effective July 5, 2003 (Supp. 03-2).

**R4-38-205. Repealed****Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 1599, effective July 5, 2003 (Supp. 03-2).

**R4-38-206. Packaging**

In addition to the requirements of A.R.S. § 32-2951, a dispensing homeopathic physician shall dispense a controlled substance or prescription-only pharmaceutical drug in a light-resistant container with a consumer safety cap, unless the patient or patient's representative and the physician agree otherwise.

**Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3).  
Amended by final rulemaking at 9 A.A.R. 1599, effective  
July 5, 2003 (Supp. 03-2).

**ARTICLE 3. EDUCATION, SUPERVISION, AND  
DELEGATION STANDARDS FOR REGISTRATION  
OF MEDICAL ASSISTANTS BY HOMEOPATHIC  
PHYSICIANS**

**R4-38-301. Definitions**

The definitions in A.R.S. §§ 32-2901, 32-2933, and 32-2951 apply to this Article. Additionally, in this Article:

“Advertisement” means a written, oral, or electronic communication, including a business card or telephone directory listing, which is intended, directly or indirectly, to inform a person that a medical assistant provides a homeopathic procedure.

“Delegated procedure” means a technical homeopathic function that a medical assistant is qualified to perform and is specified in the medical assistant’s Board-approved job description.

“Electrodermal testing device” means an instrument that is FDA-registered for the measurement of galvanic skin response.

“FDA” means the United States Food and Drug Administration.

“Homeopathic modality” means a method of diagnosis and treatment listed in the definition of the practice of homeopathic medicine at A.R.S. § 32-2901.

“Homeopathic repertorization” means to assess an individual’s symptoms and use a reference to determine the appropriate homeopathic remedy for each symptom.

“Homeotherapeutic instruction” means education regarding the signs, symptoms, and physical findings that lead to the recommendation of a particular substance or therapeutic procedure.

“Hour” means 60 minutes.

“Kinesiology” means the scientific study of human movement.

“Patient record,” as used in A.R.S. § 32-2936, means a medical record, as defined at A.R.S. § 12-2291.

**Historical Note**

Adopted effective January 27, 1995 (Supp. 95-1).  
Amended by final rulemaking at 16 A.A.R. 178, effective  
March 6, 2010 (Supp. 10-1).

**R4-38-302. Requirements to Supervise a Medical Assistant; Standards for Supervision**

- A. Before a homeopathic physician applies to the Board to register a medical assistant under R4-38-306, the homeopathic physician shall be licensed by the Board.
- B. When a homeopathic physician applies to the Board to register a medical assistant, the homeopathic physician shall submit evidence, as outlined in R4-38-103(C), that the homeopathic physician is qualified in the homeopathic modality of the procedure that will be delegated to the medical assistant.
- C. The Board shall find that a homeopathic physician is qualified in the homeopathic modality of the procedure that will be delegated to a medical assistant if the homeopathic physician submits with the application to register the medical assistant certificates of attendance or other evidence that the homeopathic physician completed postgraduate coursework in the

delegated homeopathic modality equal to or exceeding the number of hours specified in R4-38-103(C)(1) through (6).

- D. A homeopathic physician who supervises a registered medical assistant shall:
  1. Perform and document in the patient record the following for each patient for whom the medical assistant performs a delegated procedure:
    - a. Initial evaluation,
    - b. Treatment planning including any modification in the treatment plan, and
    - c. Re-evaluation of the patient’s health status every fourth visit and at the time of discharge or termination of treatment;
  2. Respond within 15 minutes to a telephone call or other telecommunication from a medical assistant who performs a delegated procedure when the homeopathic physician is not physically present at the location at which the medical assistant is working;
  3. Ensure that a note is placed in the patient record every time the medical assistant seeks direction from the homeopathic physician regarding a delegated procedure performed for a patient;
  4. Ensure that the medical assistant performs only delegated procedures that are in the medical assistant’s Board-approved job description;
  5. Provide a specific written order for any procedure delegated to and performed by the medical assistant for a patient;
  6. Ensure that the specific written order required under subsection (D)(5) is placed in the patient record on the day that the medical assistant performs the delegated procedure;
  7. Ensure that the medical assistant makes a contemporaneous note in the patient record of any procedure performed by the medical assistant for the patient;
  8. Review, initial, and date the medical assistant notes placed in patient records within one week after each note is made and initial and date each note; and
  9. Review with the medical assistant a patient’s response to treatments performed by the medical assistant:
    - a. Within three months of the initial visit,
    - b. After any significant change in the initial treatment plan, and
    - c. After an adverse reaction.

**Historical Note**

Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-302 renumbered to R4-38-303; new Section R4-38-302 made by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

**R4-38-303. Board Standards for a Formal Education Program**

- A. The Board establishes the following minimum standards for a formal education program in the subject area specified:
  1. Neuromuscular integration therapy procedures. A formal education program in neuromuscular integration therapy procedures shall:
    - a. Be provided at an educational institution and designed to qualify a graduate as a physical therapist assistant in a U.S. jurisdiction; or
    - b. Consist of 750 hours of educational training and 250 hours of supervised clinical experience in Feldenkrais, Rolfing, Hellerwork, Trager, Orthobionomy, Shiatsu, Reiki, Polarity, Jin Shin Jyutsu, or a similar therapy;

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2. Homeopathic repertorization procedures. A formal education program in homeopathic repertorization procedures shall:
    - a. Be provided at an educational institution,
    - b. Be designed to train a graduate in classical homeopathy, and
    - c. Consist of the following:
      - i. 200 hours of education training, and
      - ii. 100 hours of supervised clinical experience, and
  3. Nutrition counseling and orthomolecular therapy procedures. A formal education program in nutrition counseling and orthomolecular therapy procedures shall:
    - a. Be provided at an educational institution, and
    - b. Consist of the following:
      - i. 500 hours of education training, and
      - ii. 175 hours of supervised clinical internship, or
    - c. Result in certification by the Clinical Nutrition Certification Board.
- B.** If a homeopathic physician applies to register as a medical assistant an individual who completed a formal education program in a homeopathic modality other than those listed in subsection (A), the homeopathic physician shall submit to the Board evidence that the program consists of educational training and clinical supervision that is substantially equivalent to the requirements specified in R4-38-103(C).

**Historical Note**

Adopted effective January 27, 1995 (Supp. 95-1). Section repealed; new R4-38-303 renumbered from R4-38-302 and amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

**R4-38-304. Approved Practical Education Program; Renewal**

- A.** A homeopathic physician who wishes to provide on-the-job practical education to an unregistered individual shall apply for and obtain Board approval of a practical education program specifically designed for the unregistered individual before providing the practical education program.
- B.** The Board's approval of a practical education program is specific to the unregistered individual being trained. A homeopathic physician who wishes to provide on-the-job practical education to more than one unregistered individual shall apply for and obtain Board approval of a practical education program for each unregistered individual.
- C.** The Board shall approve a practical education program only if the program meets one of the following minimum standards:
1. Neuromuscular integration therapy procedures. For each therapy listed in R4-38-303(A)(1)(b) in which practical education is provided, 375 hours of instruction and 125 hours of supervised clinical experience;
  2. Homeopathic repertorization procedures.
    - a. If performed with an electrodermal testing device or kinesiology, 180 hours of homeotherapeutic instruction including at least 45 hours of supervised clinical experience;
    - b. If performed without an electrodermal testing device or kinesiology, 200 hours of homeotherapeutic instruction and 100 hours of supervised clinical experience;
  3. Nutrition counseling and orthomolecular therapy procedures, 500 hours of instruction and 170 hours of supervised clinical experience; and
  4. Other homeopathic procedure. Hours of instruction and supervised clinical experience that the Board determines is sufficient to enable the unregistered individual being trained to perform as a medical assistant in a safe and competent manner.
- D.** To obtain the Board's approval of a practical education program, the homeopathic physician who will provide the training shall:
1. Provide the following information on a form obtained from the Board:
    - a. Name of the unregistered individual for whom the practical education program is designed,
    - b. Residential address and telephone number of the unregistered individual,
    - c. Social Security number of the unregistered individual,
    - d. A training protocol that identifies the:
      - i. Homeopathic procedure in which the unregistered individual will be trained,
      - ii. Subject matter on which instruction will be provided and the hours devoted to each subject, and
      - iii. Manner in which supervised clinical experience will be provided,
    - e. Address at which the practical education program will be conducted,
    - f. Name of the homeopathic physician who will provide the practical education, and
    - g. License number of the homeopathic physician who will provide the practical education.
  2. Attach the following to the form required under subsection (D)(1):
    - a. Documentation of any previous on-the-job training or formal education, as described in R4-38-303, completed by the unregistered individual for whom the practical education program is designed;
    - b. Documentation that the homeopathic physician is qualified in the procedure in which training will be provided. For the procedures in which training may be provided, the Board shall accept certificates of attendance or other evidence that the homeopathic physician completed postgraduate course work in the homeopathic procedure to be taught equal to or exceeding the number of hours specified in R4-38-103(C)(1) through (6).
  3. Sign the application form affirming that the homeopathic physician shall:
    - a. Ensure that the unregistered individual being trained is not held out or represented to be a medical assistant,
    - b. Ensure that the unregistered individual is supervised at all times,
    - c. Ensure that the unregistered individual is assigned only tasks that the unregistered individual can perform safely and competently,
    - d. Ensure that the unregistered individual is not registered by the Board as a medical assistant before completing the practical education program, and
    - e. Provide the unregistered individual with a certificate or other evidence of completion when the unregistered individual completes the Board-approved practical education program. The homeopathic physician shall include the following information on the certificate or other evidence of completion:
      - i. Name of the unregistered individual completing the practical education program,
      - ii. Name and license number of the homeopathic physician who provided the practical education program,

- iii. Date on which Board approval was obtained for the practical education program,
  - iv. Dated signature of the homeopathic physician affirming that the practical education program completed met the standards established by the Board.
- E. The Board's approval of a practical education program is valid for one year. If the homeopathic physician who obtained approval of the practical education program does not complete providing the program within one year, the homeopathic physician may renew the program by submitting to the Board a letter affirming continued compliance with this Section and paying the fee listed in R4-38-105.

#### Historical Note

Adopted effective January 27, 1995 (Supp. 95-1).  
Amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

#### R4-38-305. Minimum Requirements for Registration of a Homeopathic Medical Assistant

- A. The Board shall approve the registration of an individual as a homeopathic medical assistant only if the homeopathic physician who will supervise the individual submits evidence that the individual:
1. Completed a formal education program that meets the standards at R4-38-303, or
  2. Completed a practical education program that is approved by the Board under R4-38-304.
- B. The Board shall approve the registration of an individual as a homeopathic medical assistant only if the individual is employed and supervised by a homeopathic physician who submits the evidence required under R4-38-302(C) showing that the homeopathic physician is qualified in the homeopathic modality in which the individual will work.

#### Historical Note

Adopted effective January 27, 1995 (Supp. 95-1). Section repealed; new Section R4-38-305 made by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

#### R4-38-306. Application to Register a Medical Assistant

- A. If a homeopathic physician intends that an individual who meets one of the minimum requirements listed in R4-38-305(A) work as a medical assistant, the homeopathic physician shall submit to the Board an application to register the individual within two weeks after employing the individual.
- B. To register an individual who meets one of the standards at R4-38-305(A) as a medical assistant, a homeopathic physician shall submit to the Board the following information on a form obtained from the Board:
1. About the individual being registered:
    - a. Name;
    - b. Residential address;
    - c. Residential and mobile telephone numbers;
    - d. E-mail address;
    - e. Social Security number;
    - f. Address of the practice location at which the individual will perform delegated procedures;
    - g. Telephone and fax numbers of the clinic at which the individual will perform delegated procedures;
    - h. Statement of whether the individual completed a formal education program that meets the standards at R4-38-303 or a practical education program approved by the Board under R4-38-304;
    - i. Statement of whether the individual is or ever has been licensed as a health care practitioner in a U.S.

jurisdiction in a profession subject to regulation by licensure in Arizona and if so:

- i. A list of all jurisdictions in which the individual is or ever has been licensed as a health care professional, and
  - ii. A list of the health care professions in which the individual is or ever has been licensed; and
  - iii. A statement whether the individual has ever been subject to a disciplinary proceeding by a health care regulatory board in any jurisdiction and if so, the jurisdiction, health care profession, date, and cause and result of the disciplinary proceeding;
  - j. Statement of whether the individual has ever been charged with or convicted of any criminal act and if so, the nature of the criminal act, date, jurisdiction, and current status;
  - k. Statement of whether the individual is a U.S. citizen and if not, whether the individual is an alien qualified to work in the U.S.; and
  - l. Dated signature of the individual being registered affirming that the information provided under subsections (B)(1)(a) through (k) is true, correct, and complete;
2. Description of the homeopathic procedures and other duties that will be delegated to the individual being registered, and
  3. About the homeopathic physician:
    - a. Name,
    - b. License number, and
    - c. Dated signature of the homeopathic physician affirming that:
      - i. All information provided, including the materials listed in subsection (C), is true, correct, and complete; and
      - ii. The homeopathic physician has reviewed the standards for supervision listed at R4-38-302 and agrees to comply with the standards.
- C. In addition to the form required under subsection (B), a licensed homeopathic physician applying to register an individual as a medical assistant shall attach the following materials to the form:
1. A curriculum vitae or resume of the individual being registered;
  2. If the individual being registered completed a formal education program that meets the standards at R4-38-303, an official transcript from the school, college, or technical institution that provided the program;
  3. If the individual being registered completed a practical education program approved by the Board under R4-38-304, a copy of the certificate or other evidence of completion required under R4-38-304;
  4. If the individual being registered has ever been charged with or convicted of any criminal act, a certified copy of the original charging document and a copy of all court documents relating to the individual's current status;
  5. If the individual being registered is not a U.S. citizen, a copy of the document that shows the individual is qualified to work in the U.S.;
  6. The evidence required under R4-38-302(C) showing that the homeopathic physician is qualified in the homeopathic modality to be delegated; and
  7. The fee required under R4-38-105.
- D. Multiple homeopathic physicians who work in the same medical practice may apply jointly to register one individual as a medical assistant. If multiple homeopathic physicians apply

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jointly to register one individual as a medical assistant, each shall:

1. Provide the information and affirmation required under subsection (B)(3), and
  2. Provide the evidence required under subsection (C)(6).
- E.** A homeopathic physician who has registered a medical assistant may amend the medical assistant's job description provided under subsection (B)(2). To amend the job description of a registered medical assistant, the homeopathic physician shall submit to the Board:
1. A new job description that identifies the homeopathic procedures and other duties that will be delegated to the registered medical assistant,
  2. The documentation required under subsection (C)(2) or (3) showing that the registered medical assistant is qualified to perform the procedures and other duties to be delegated, and
  3. The evidence required under subsection (C)(6) showing that the homeopathic physician is qualified in the homeopathic modality to be delegated.

**Historical Note**

Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-306 renumbered to R4-38-309; new R4-38-306 renumbered from R4-38-308 and amended by final rulemaking at 16 A.A.R. 178, March 6, 2010 (Supp. 10-1).

**R4-38-307. Additional Requirements to Register a Previously Licensed Health Care Practitioner**

- A.** An individual who is or ever has been licensed as a health care practitioner in a U.S. jurisdiction in a profession subject to regulation by licensure in this state shall not attempt to practice the health care profession outside of this state's regulatory authority by obtaining registration as a medical assistant under this Chapter.
- B.** A homeopathic physician may register as a medical assistant an individual previously licensed or subject to professional regulation as a health care practitioner in a U.S. jurisdiction, only if the individual meets one of the standards in R4-38-305(A). To register as a medical assistant an individual previously licensed or subject to professional regulation as a health care practitioner in a U.S. jurisdiction, a homeopathic physician shall submit to the Board the application form and materials required under R4-38-306(B) and (C).
- C.** In addition to complying with subsection (B), a homeopathic physician applying to register as a medical assistant an individual previously licensed or subject to professional regulation as a health care professional in a U.S. jurisdiction shall submit to the Board an affidavit from the individual being registered stating the reason for which the individual seeks employment as a homeopathic medical assistant rather than as a licensed Arizona health care practitioner in accordance with the individual's professional training.
- D.** The Board shall conduct an investigation of the individual's health care professional practice in all jurisdictions in which the individual is or ever has been licensed. The Board shall ensure that the investigation is sufficient to determine whether the individual ever engaged in unprofessional conduct, was deemed incompetent, or was physically or mentally unable to provide health care services safely.
- E.** The Board shall conduct a personal interview with the homeopathic physician and the individual being registered to determine whether:
  1. The description of homeopathic procedures and delegated duties provided under subsection (B) is accurate,

2. The supervisory relationship between the homeopathic physician and individual will not constitute a violation of A.R.S. § 32-2933(11),
3. The homeopathic physician understands the supervisory responsibilities, and
4. The individual being registered understands the limitations under this Article and applicable statutes.

**Historical Note**

Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-307 renumbered to R4-38-312; new R4-38-307 renumbered from R4-38-310 and amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

**R4-38-308. Renewal of Medical Assistant Registration**

- A.** The registration of a medical assistant expires:
  1. When the medical assistant ceases to be employed by the homeopathic physician who registered the medical assistant, or
  2. When the supervising homeopathic physician fails to comply with subsection (B) by December 31.
- B.** To renew the registration of a medical assistant, on or before December 31 of each year, the supervising homeopathic physician shall submit to the Board:
  1. A renewal application form, which is available from the Board, and provide the following information:
    - a. About the homeopathic physician.
      - i. Name;
      - ii. Name of medical facility at which the homeopathic physician is employed;
      - iii. Address of the medical facility;
      - iv. Telephone and fax numbers of the medical facility;
      - v. E-mail address of the homeopathic physician; and
      - vi. Dated signature of the homeopathic physician affirming that the information provided is true, correct, and complete;
    - b. About the medical assistant.
      - i. Name;
      - ii. Residential address;
      - iii. Residential telephone number;
      - iv. Homeopathic procedures delegated to the medical assistant;
      - v. Practice locations at which the medical assistant works;
      - vi. Statement of whether the medical assistant has been arrested or charged with a criminal act during the last year; and if so, the nature of the criminal act, date, jurisdiction, and current status; and
      - vii. Dated signature of the medical assistant affirming that the information provided is true, correct, and complete; and
  2. The fee specified in R4-38-105 for annual renewal of a medical assistant registration.
- C.** When a medical assistant's registration expires, the supervising homeopathic physician may register the medical assistant again by complying with R4-38-306.

**Historical Note**

Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-308 renumbered to R4-38-306; new Section R4-38-308 made by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

**R4-38-309. Restrictions on Delegated Procedures**

A homeopathic physician shall not delegate the following procedures to a registered medical assistant:

1. Psycho-therapeutic procedures, including individual or group psychotherapy, clinical hypnosis, or other behavioral health interventions subject to independent regulation in this state; or
2. Dispensing drugs, homeopathic agents, herbal products, natural products, or therapy devices if the supervising homeopathic physician has not obtained from the Board a dispensing permit.

**Historical Note**

Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-309 renumbered to R4-38-310; new R4-38-309 renumbered from R4-38-306 and amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

**R4-38-310. Registration Not Transferable; Multiple Employers**

**A.** The registration and job description of a medical assistant are not transferable from one employing homeopathic physician to another or from one medical assistant to another.

1. If a medical assistant changes from one employing homeopathic physician to another, the new employing homeopathic physician shall apply to the Board to register the medical assistant;
2. If a homeopathic physician employs a new medical assistant, the homeopathic physician shall apply to the Board to register the new medical assistant.

**B.** A medical assistant may be employed by more than one homeopathic physician.

1. If the multiple homeopathic physicians by whom a medical assistant is employed are part of the same medical practice, they shall apply jointly under R4-38-306(D) to register the medical assistant;
2. If the multiple homeopathic physicians by whom a medical assistant is employed are not part of the same medical practice, each shall apply under R4-38-306 to register the medical assistant.

**Historical Note**

Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-310 renumbered to R4-38-307; new R4-38-310 renumbered from R4-38-309 and amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

**R4-38-311. Responsibilities of a Registered Medical Assistant**

After approval by the Board, a registered medical assistant shall:

1. Perform only the homeopathic procedures and duties specified under R4-38-306(B)(2),
2. Wear a clearly labeled name tag stating the designation "medical assistant" and the specific homeopathic modality in which the registered medical assistant is approved to work, and
3. Ensure that any advertisement includes:
  - a. The designation "medical assistant,"
  - b. The name of the supervising physician, and
  - c. A clear indication of the supervised nature of the delegated procedures provided.

**Historical Note**

Adopted effective January 27, 1995 (Supp. 95-1). Section repealed, new Section made by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

**R4-38-312. Unprofessional Conduct**

The following conduct by a homeopathic physician who supervises a medical assistant is unprofessional conduct because the conduct does or might constitute a danger to the health, welfare, or safety of the patient or the public:

1. Obtaining board approval for a practical education program or supervision of the medical assistant under false pretenses,
2. Failing to adhere to a standard for supervision listed in R4-38-302(D),
3. Failing to register and maintain registration for the medical assistant as required by this Article,
4. Allowing the medical assistant to perform a procedure not specified in the medical assistant's Board-approved job description,
5. Delegating a procedure to an individual who is not registered with the Board or for whom the homeopathic physician has not obtained approval of a practical education program,
6. Holding out or representing that an unregistered individual for whom the homeopathic physician is providing an approved practical education program is a medical assistant, and
7. Failing to ensure that the medical assistant complies with A.R.S. § 32-2933 and this Article.

**Historical Note**

New Section R4-38-312 renumbered from R4-38-307 and amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

**ARTICLE 4. APPLICATION AND RENEWAL PROCESS; TIME-FRAMES****R4-38-401. Definitions**

In this Article, the following terms apply:

1. "Application period" means 365 days, starting from the date an initial application and fee are received in the Board office under A.R.S. § 32-2912(F)(3) and (4).
2. "Deficiency notice" means a written, comprehensive list of missing information or documents.
3. "Prescribed fee" means a fee permitted by A.R.S. § 32-2914 or prescribed by R4-38-104.
4. "Serve" means sending the document by U.S. mail to the last address provided by the applicant.
5. "Staff" means any person employed or designated by the Board to perform administrative tasks.

**Historical Note**

Adopted effective September 24, 1998 (Supp. 98-3).

**R4-38-402. Application; Initial License, Permit, or Registration**

**A.** An applicant shall submit to the Board office a signed, notarized application form, the contents of which are described by A.R.S. Title 32, Chapter 29 and 4 A.A.C. 38; any supporting information required; and the prescribed fee. Within 90 days after receipt of an initial application package, staff shall finish an administrative completeness review.

1. If the application package is complete, staff shall serve the applicant with a written notice of administrative completeness informing the applicant of the date, time, and place of the Board's consideration of the application.
2. If the application package is deficient, staff shall serve the applicant with a written deficiency notice. The 90-day time-frame for staff to finish the administrative completeness review is suspended from the date the deficiency notice is served until all missing information is received.

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- B.** Except as otherwise provided by law, the applicant shall provide all missing information within 180 days after the date on the deficiency notice, including information from other agencies, institutions, and persons. If the applicant has not already done so, the applicant shall take the written examination prescribed in R4-38-105 within the 180 days.
- C.** Within 90 days after receipt of a complete initial application package, the Board shall render a decision on the initial license, permit, or registration. The applicant shall undergo the oral examination and interview prescribed in R4-38-106 within the 90 days.
1. If the Board finds the applicant meets the licensing requirements, the Board shall grant a license effective on the date that the Board receives the license issuance fee. If no license fee is required, the Board shall grant the permit or registration, which is effective on the date granted.
  2. If the Board finds the applicant does not meet the licensing requirements, the Board shall issue a written notice of denial of license.
  3. If the Board determines that there are substantive deficiencies in the application, the Board shall serve a single comprehensive written request for additional information.
  4. The 90-day substantive review time-frame is suspended from the date on the request for additional information until the date that all requested information is received. Except as otherwise provided by law, the applicant shall provide the requested information within 60 days from the date on the notice.
- D.** If an applicant fails to provide the information required in subsections (B) and (C), the Board shall determine whether to deny the application or to consider it withdrawn under A.R.S. § 32-2912(F).
- shall submit to the Board a renewal application form, the contents of which are prescribed by A.R.S. Title 32, Chapter 29 and 4 A.A.C. 38, and the appropriate fees.
- B.** Within 30 days after receipt of a renewal application package, staff shall notify the applicant that the package is either complete or deficient.
1. If the application package is complete, staff may serve the applicant with a written notice of administrative completeness. If the notice of administrative completeness is not served within 30 days after receipt of a renewal application package, the package is deemed complete.
  2. If the renewal application package is deficient, staff shall serve the applicant with a written deficiency notice. The 30-day time-frame for staff to finish the administrative completeness review is suspended from the date the deficiency notice is served until all missing information is received.
- C.** Except as otherwise provided by law, an applicant for renewal shall provide all missing information within 10 days after the date on the deficiency notice or by the applicable deadline prescribed in A.R.S. § 32-2915, whichever is later.
- D.** Within 90 days of receipt of a complete renewal application package, the Board shall either issue a license renewed notice, showing the effective year of renewal, or conduct a substantive review of those renewal applications which, when considered alone or in conjunction with additional information, raise a concern that the applicant's conduct may be in violation of A.R.S. Title 32, Chapter 29. The Board shall investigate and resolve such a concern under A.R.S. § 32-2934.
- E.** If an applicant for renewal fails to provide the missing information required by subsection (C), the license, permit, or registration expires effective January 1 of the renewal year for which the application was made and the Board shall not refund any renewal fees paid for that year.

**Historical Note**

Adopted effective September 24, 1998 (Supp. 98-3).

**R4-38-403. Application; Renewal of License, Permit, or Registration**

- A.** On or before the deadlines prescribed in A.R.S. § 32-2915(D), an applicant for renewal of a license, permit or registration

**Historical Note**

Adopted effective September 24, 1998 (Supp. 98-3).

### 32-2904. Powers and duties

#### A. The board shall:

1. Conduct all examinations for applicants for a license under this chapter, issue licenses, conduct hearings, regulate the conduct of licensees and administer and enforce this chapter.
2. Enforce the standards of practice prescribed by this chapter and board rules.
3. Collect and account for all fees under this chapter and deposit, pursuant to sections 35-146 and 35-147, the monies in the appropriate fund.
4. Maintain a record of its acts and proceedings, including the issuance, refusal to issue, renewal, suspension or revocation of licenses to practice according to this chapter.
5. Maintain a roster of all persons who are licensed pursuant to this chapter that includes:
  - (a) The licensee's name.
  - (b) The current professional office address.
  - (c) The date and number of the license issued under this chapter.
  - (d) Whether the licensee is in good standing.
6. Adopt and use a seal, the imprint of which, together with the signatures of the president or vice-president of the board and the secretary-treasurer, shall evidence its official acts.
7. Contract with the department of administration for administrative and record keeping services.
8. Charge additional fees that do not exceed the cost of the services for services the board deems necessary to carry out its intent and purposes.
9. Adopt rules regarding the regulation and the qualifications of medical assistants.
10. Keep board records open to public inspection during normal business hours.

#### B. The board may:

1. Adopt rules necessary or proper for the administration of this chapter.
2. Subject to title 41, chapter 4, article 4, hire personnel to carry out the purposes of this chapter.
3. Hire investigators subject to title 41, chapter 4, article 4 or contract with investigators to assist in the investigation of violations of this chapter and contract with other state agencies if required to carry out this chapter.
4. Appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.
5. Subject to title 41, chapter 4, article 4, employ consultants to perform duties the board determines are necessary to implement this chapter.
6. Appoint from its membership a temporary secretary to perform the duties of the executive director if that office is vacant. The temporary secretary is eligible to receive compensation pursuant to section 38-611.
7. Compile and publish an annual directory.

8. Adopt rules to establish competency or professional review standards for any minor surgical procedure.
9. Appoint two or more board members to a subcommittee that reviews and approves applications and issues permits pertaining to homeopathic medical assistants and associated practical educational programs, pursuant to board rules.
10. Appoint two or more board members to a subcommittee that reviews and approves applications and issues permits pertaining to drugs and device dispensing practices, pursuant to board rules.

**BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS**

Title 4, Chapter 33, Articles 4, Assisted Living Facility Manager Certification; Article 6, Assisted Living Facility Manager Training Programs



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:**

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

**FROM:** Council Staff

**DATE:** May 31, 2019

**SUBJECT: BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS (F19-0703)**  
Title 4, Chapter 33, Articles 4 and 6

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The Five-Year-Review Report (5YRR) from the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers relates to rules in Title 4, Chapter 33, the rules cover the following:

- **Article 4: Assisted Living Facility Manager Certification**
- **Article 6: Assisted Living Facility Manager Training Programs**

In the previous 5YRR for these rules, the Board indicated it would amend R4-33-401(1) and (4) and R4-33-407(B), these amendments were completed in a rulemaking in 2015. The rules in Article 6 were created in 2013, and therefore have not been previously reviewed.

**Proposed Action:**

The Board proposes to take no action on these rules.

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

Yes. The Board cites both general and specific authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board has determined that the economic impact of Articles 4 and 6 does not differ significantly from what was originally determined by the economic, small business, and consumer impact statement (EIS) from the most recent rulemaking in 2015.

The stakeholders include the Board, administrators of nursing care institutions, nursing care institutions, managers of assisted living facilities, assisted living facilities, and the public.

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

The Board has determined that the rules under review provide the least intrusive and least costly method of achieving the regulatory objective. The Board's rules place minimal burdens on licensees to ensure that nursing care institution administrators and assisted living facility managers meet minimum qualifications.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Board indicates it did not receive any written criticisms on these rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The rules are clear, concise, understandable, effective and consistent with other rules and statutes.

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

Yes. The Board indicates the rules are enforced as written.

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

Not applicable. There is no corresponding federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes. The Board indicates it complies with A.R.S. § 41-1037 because the certification is issued to qualified individuals to conduct activities that are substantially similar in nature.

**9. Conclusion**

As stated above, the Board proposes to take no action at the moment on these rules. Council Staff recommends approval of this report.



**BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND  
ASSISTED LIVING FACILITY MANAGERS**

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**Douglas A. Ducey**  
Governor

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**Allen Imig**  
Executive Director

May 6, 2019

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

**RE: Five-year-review Report on 4 A.A.C. 33, Articles 4 and 6**

Dear Ms. Sornsins:

As required by A.R.S. § 41-1056, the Arizona Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers submits for Council's approval a report on a review of the referenced rules.

The Board was scheduled to review and report on Articles 6 and 7 by March 29, 2019. In a letter dated January 7, 2019, the Board's executive director informed the Council the Board would take a 120-day extension of time under A.R.S. § 41-1056(I) to complete the review of Article 6 and requested the review and report of Article 7 be rescheduled under A.R.S. § 41-1056(H). The Council granted rescheduling the review of Article 7 in a letter from its chair dated January 24, 2019. The Board is scheduled to review and report on Article 4 by the end of July 2019.

In the attached report, the Board addresses its review of both Article 4 and Article 6. The Board reviewed all referenced rules.

As required under A.R.S. § 41-1056(A), the Board certifies it is in compliance with A.R.S. § 41-1091 regarding a substantive policy directory.

If you have questions regarding this report, please contact me at (602) 542-8156. Thank you for your consideration.

Sincerely,

Allen Imig  
Executive Director

**BOARD OF EXAMINERS FOR NURSING CARE  
INSTITUTION ADMINISTRATORS AND  
ASSISTED LIVING FACILITY MANAGERS**

Five-year-review Report: A.A.C. Title 4, Chapter 33, Articles 4  
and 6

May 2019

# **Five-year-review Report**

## **A.A.C. Title 4. Professions and Occupations**

### **Chapter 33, Articles 4 (Assisted Living Facility Manager Certification) and 6 (Assisted Living Facility Manager Training Programs)**

#### **INTRODUCTION**

The Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) was created in 1975 to fulfill a federal requirement that nursing care institution administrators be licensed and regulated for the state to receive federal Medicaid monies (See 42 U.S.C. Chapter 7, Subchapter XIX, § 1396a(29) and 1396g).

In 1990, the Legislature added certification of assisted living facility managers to the Board's responsibilities to ensure minimum care standards for residents of assisted living facilities. The Board's statutory responsibilities, which are addressed in Article 4, include issuing and renewing certificates, conducting investigations and hearings regarding statutory violations, disciplining managers, and providing consumer information to the public.

During the 2011 legislative session, the legislature enacted SB1038, which transferred regulatory oversight of training programs for assisted living facility managers from the Arizona Department of Health Services to the Board. The Board is charged with establishing standards for and approving training programs for managers and caregivers of assisted living facilities; specifically authorized to make nonrefundable fees for review of initial and renewal applications; and authorized to impose discipline if a training program violates the Board's rules. The rules in Article 6 address these statutory responsibilities.

#### Statute that generally authorizes the agency to make rules:

All of the rules are generally authorized by A.R.S. § 36-446.03, which provides the Board may adopt, amend or repeal reasonable and necessary rules and standards for the administration of A.R.S. Title 36, Chapter 4, Article 6 in compliance with Title XIX of the Social Security Act, as amended.

1. Specific statute authorizing the rule:

- R4-33-401. Requirements for Initial Certification by Examination: A.R.S. §§ 36-446.03(D) and (K) and 36-446.04(C)
- R4-33-402. Requirements for a Temporary Certificate: A.R.S. § 36-446.06
- R4-33-403. Initial Application A.R.S. §§ 36-446.03(K) and 41-1080
- R4-33-404. Administration of Examination; Certificate Issuance: A.R.S. §§ 36-446.03(K) and 36-446.04(C)(3)
- R4-33-405. Renewal Application: A.R.S. §§ 36-446.03(B)(4) and 36-446.04(G)
- R4-33-406. Inactive Status: A.R.S. § 36-446.07(I)
- R4-33-407. Standards of Conduct; Disciplinary Action: A.R.S. §§ 36-446(10) and 36-446.07(B)
- R4-33-408. Referral Requirements: A.R.S. § 36-446.03(L)
- R4-33-409. Certification Following Revocation: A.R.S. § 36-446.04
- R4-33-410. Notice of Appointment: A.R.S. § 36-446.03
- R4-33-411. Appointment as Manager of Multiple Assisted Living Facilities: A.R.S. § 36-446.03
- R4-33-601. Definitions: A.R.S. § 36-446
- R4-33-602. Minimum Standards for Assisted Living Facility Manager Training Program: A.R.S. § 36-446.03(O)
- R4-33-603. Curriculum for Assisted Living Facility Manager Training Program: A.R.S. § 36-446.03(O)
- R4-33-604. Application for Approval of an Assisted Living Facility Manager Training Program: A.R.S. § 36-446.03(B)(11)
- R4-33-605. Renewal of Approval of an Assisted Living Facility Manager Training Program A.R.S. § 36-446.03(B)(12)
- R4-33-606. Notice of Deficiency; Correction Plan; Disciplinary Action; Voluntary Termination: A.R.S. § 36-446.03(P)

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

The purpose of all the rules is to comply with statute, be consistent with current industry standards, increase efficiencies in the licensing process, and protect public health and safety.

- R4-33-401. Requirements for Initial Certification by Examination: The objective of this rule is to specify the education, work experience, examination, and training requirements to obtain initial certification.
- R4-33-402. Requirements for a Temporary Certificate: The objective of this rule is to specify the requirements for obtaining a temporary certificate before taking the examination required for certification.
- R4-33-403. Initial Application: The objective of this rule is to specify the pieces of information and documents required to apply for initial certification.
- R4-33-404. Administration of Examination; Certificate Issuance: The objective of this rule is to provide information regarding the examination required for certification and to provide notice that the Board will administratively close an application file if an applicant fails to complete the certification process within six months after passing the examination.
- R4-33-405. Renewal Application: The objective of this rule is to specify the pieces of information and documents required for certificate renewal.
- R4-33-406. Inactive Status: The objective of this rule is to provide information regarding how to place a certificate on inactive status and how to resume active status.
- R4-33-407. Standards of Conduct; Disciplinary Action: The objective of this rule is to specify the standards of conduct with which a certificate holder must comply and the consequences of failing to comply.
- R4-33-408. Referral Requirements: The objective of this rule is to require that a certificate holder obtain and maintain evidence that the certificate holder disclosed to a resident or the resident's representative or legal guardian that the assisted living facility by which the certificate holder is employed pays a fee for a referral to the assisted living facility and whether the assisted living facility has an ownership interest in the individual or entity making the referral.

R4-33-409. Certification Following Revocation: The objective of this rule is to clarify that an individual whose certification is revoked must wait a year before applying again for initial certification by examination.

R4-33-410. Notice of Appointment: The objective of this rule is to assist the Board to know who is acting as manager at each assisted living facility in the state.

R4-33-411. Appointment as Manager of Multiple Assisted Living Facilities: The objective of this rule is to limit the number of assisted living facilities a manager may manage at one time and the requirements for having multiple appointments.

R4-33-601. The objective of this rule is to facilitate understanding by defining terms used in Article 6 in a manner that is not explained adequately by a dictionary definition.

R4-33-602. The objective of this rule is to establish the minimum standards with which an assisted living facility manager training program must comply to obtain Board approval.

R4-33-603. The objective of this rule is to establish the curriculum required in a Board-approved assisted living facility manager training program.

R4-33-604. The objective of this rule is to inform applicants of the application requirements for obtaining Board approval of an assisted living facility manager training program.

R4-33-605. The objective of this rule is to inform owners of an approved assisted living facility manager training program how to renew the approval.

R4-33-606. The objective of this rule is to inform owners of an approved assisted living facility manager training program of the consequences of failing to comply fully with the statutes and rules regarding the training program.

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

The Board concluded the rules are effective in achieving their objectives because the Board is able to certify assisted living facility managers and approve manager training programs without difficulty and

within the specified time frames. Additionally, no criticism of the rules has been received during the last five years and no action taken under the rules has ever been overturned on appeal.

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

There are no federal statutes directly applicable to the subject matter of the rules. All assisted living facilities are required to comply with federal laws prohibiting discrimination and regulating workplace safety. The rules are consistent with state statutes (see A.R.S. Title 36, Chapter 4, Article 6), other rules of the Board, and applicable DHS rules.

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

The Board enforces the rules without difficulty.

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

The rules are clear, concise, and understandable.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

No written criticism has been received in the last five years regarding any of the reviewed rules.

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

R4-33-403, R4-33-404, R4-33-405, R4-33-406, R4-33-409, and R4-33-410 have not been amended since the Board's 2014 5YRR. The Board received no information that causes it to believe the previously estimated economic impact of these rules was incorrect.

#### August 2013 (19 A.A.R. 1619)

The rules in Article 6, regarding assisted living facility manager training programs, were made in this rulemaking. The Board's authority to regulate assisted living facility manager training programs had recently been moved from DHS. The Board estimated owners of training programs would incur

minimal cost to apply and pay for program approval and to comply with required standards and curriculum.

There are currently 2,384 active, certified assisted living facility managers working in 2,078 assisted living facilities. These facilities have 39,053 beds, including those for individuals needing adult foster care. The Board has approved 11 assisted living facility manager training programs. Three of the programs are within a facility. The Board concludes its estimate the rules would impose minimal costs on owners of training programs was accurate because the Board received no feedback the program approval process or complying with required standards and curriculum has imposed costs on owners of the training programs. There have been no complaints against training programs and The Board has not had to revoke approval of any training program.

June 2015 (21 A.A.R. 542)

The most significant change made in this rulemaking was to add a Section limiting the number of assisted living facilities a manager could manage at one time and establishing requirements for managing multiple facilities simultaneously. The Board indicated the benefit of ensuring adequate supervision of facilities and their vulnerable populations offset any cost incurred by a manager no longer able to manage more than two facilities at a time. The Board estimates that 30 to 35 percent of managers manage two facilities and believes its estimate of the minimal economic impact of the new rule was accurate.

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 analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

In a 5YRR approved by the Council on August 5, 2014, the Board indicated it would amend R4-33-401(1) and (4) and R4-33-407(B). These amendments were made in a rule making that went into effect on April 17, 2015 (See 21 A.A.R. 543). The rules in Article 6 were newly made in 2013 and have not been previously reviewed.

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

The Board believes protecting the public health and safety outweighs the costs and burdens of the rules on persons regulated by the rules. A person who wishes to be certified as an assisted living facility manager must meet the minimum qualifications, submit an application, take an examination, and adhere to minimum standards of conduct. Most of the cost of these requirements results from statute rather than rule. It is statute that prescribes minimum qualifications including training and a fingerprint clearance card (A.R.S. § 36-446.04(C)), requires an examination (A.R.S. § 36-446.03(D)), and prescribes minimum standards of conduct (A.R.S. § 36-446.07). The rules simply prescribe the manner in which applicants and certified managers comply with statute.

The Board believes the benefit of protecting Arizona's fragile population by ensuring managers of assisted living facilities are well trained outweighs the cost of requiring owners of training programs to adhere to minimum standards and apply for and maintain program approval from the Board. It is statute that requires the owner of an assisted living facility manager training program to apply for and renew approval of the program and statute requires the Board to establish standards for the training programs. The rules simply comply with statute.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

No federal law is directly applicable to the subject matter of the reviewed rules. Title XIX of the Social Security Act applies to nursing care institutions but not to assisted living facilities.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

The certification issued under Article 4 and the training program approval issued under Article 6 comply with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Board intends to take no rulemaking action as a result of this review.



## **ARTICLE 4. ASSISTED LIVING FACILITY MANAGER CERTIFICATION**

### **R4-33-401. Requirements for Initial Certification by Examination**

- A.** Except as provided in subsection (B), an individual who wishes to receive an initial certificate by examination as an assisted living facility manager shall:
1. Education:
    - a. Earn a high school diploma or G.E.D., and
    - b. Complete an assisted living facility caregiver training program that is approved by the Board under A.A.C. R4-33-701, and
    - c. Complete an assisted living facility manager training program that is approved by the Board under A.A.C. R4-33-601, or
    - d. Hold a license in good standing issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2;
  2. Work experience. Complete at least 2,080 hours of paid work experience in a health-related field within the five years before application;
  3. Examination. Obtain a score of at least 75 percent on the Arizona examination;
  4. Training. Complete an adult cardiopulmonary resuscitation and basic first-aid training program;
  5. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and
  6. Submit all applicable information required under R4-33-403.
- B.** An individual who holds a license in good standing issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2 is exempt from the requirements specified in subsections (A)(1)(b) and (4).

#### **Historical Note**

Section R4-33-401 renumbered from R4-33-301 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 3897, effective July 31, 2004 (Supp. 04-3). Section R4-33-401 renumbered from R4-33-402 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

### **R4-33-402. Requirements for a Temporary Certificate**

- A.** To be eligible for a temporary certificate as an assisted living facility manager, an individual shall:
1. Meet the requirements under R4-33-401 except for the requirement at R4-33-401(3);
  2. Have the owner of an assisted living facility that intends to appoint the applicant as manager if the applicant is successful in obtaining a temporary certificate submit to the Board a Letter of Intent to Appoint on a form that is available from the Board. The owner of the assisted living facility shall include the following in the Letter of Intent to Appoint:
    - a. Name of the owner of the assisted living facility;
    - b. Name and address of the assisted living facility;
    - c. Name of the applicant;
    - d. An affirmation of intent to appoint the applicant;
    - e. Reason for requesting a temporary certificate for the applicant;
    - f. License number of the assisted living facility; and
    - g. Notarized signature of the owner of the assisted living facility;
  3. Not have held an Arizona temporary certificate as an assisted living facility manager within the past three years; and
  4. Not have failed the Arizona examination before applying for the temporary certificate.
- B.** At the Board's request, an applicant for a temporary certificate shall appear or be available by telephone for an interview with the Board.
- C.** A temporary certificate is valid for 150 days and is not renewable. Before expiration of the temporary certificate, the temporary certificate holder shall obtain a certificate under A.R.S. § 36-446.04 and this Article or discontinue as manager of the assisted living facility.
- D.** If a temporary certificate holder fails the Arizona examination during the term of the temporary certificate, the temporary certificate is automatically revoked and the former temporary certificate holder shall discontinue as manager of the assisted living facility.

#### **Historical Note**

Section R4-33-402 renumbered from R4-33-302 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-402 renumbered to R4-33-401; new R4-33-402 renumbered from R4-33-410 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). R4-33-402(A)(1) citation to R4-33-401(A)(3) corrected to R4-33-401(3) at the request of the Department,

see Office File No. M10-416 filed October 18, 2010 (Supp. 09-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

**R4-33-403. Initial Application**

- A.** An individual who desires to be certified as a manager of an assisted living facility shall submit the following information to the Board on an application form, which is available from the Board:
1. Full name of the applicant;
  2. Other names that the applicant has used;
  3. Mailing address of the applicant;
  4. Home, work, and mobile telephone numbers of the applicant;
  5. Applicant's date and place of birth;
  6. Applicant's Social Security number;
  7. Address of every residence at which the applicant has lived in the last five years;
  8. Education information regarding the applicant, including:
    - a. Name and location of last high school attended;
    - b. Date of high school graduation or date on which a G.E.D. was earned; and
    - c. Name and address of every accredited college or university attended, dates of attendance, date of graduation, and degree or certificate earned;
  9. Information regarding professional licenses or certifications currently or previously held by the applicant, including:
    - a. Name of issuing agency;
    - b. License or certificate number;
    - c. Issuing jurisdiction;
    - d. Date on which the license or certificate was first issued;
    - e. Whether the license or certificate is current; and
    - f. Whether the license or certificate is in good standing and if not, an explanation;
  10. Information regarding the applicant's employment record for the last five years, including:
    - a. Name, address, and telephone number of each employer;
    - b. Title of position held by the applicant;
    - c. Name of applicant's supervisor;
    - d. Dates of employment;
    - e. Number of hours worked each week;
    - f. Whether the employment was full or part time; and
    - g. Reason for termination;
  11. Whether the applicant was ever denied a professional license or certificate and if so, the kind of license or certificate denied; licensing authority making the denial, and date;
  12. Whether the applicant ever voluntarily surrendered a professional license or certificate and if so, the kind of license or certificate surrendered, licensing authority, date, and reason for the surrender;
  13. Whether the applicant ever allowed a professional license or certificate to lapse and if so, the kind of license or certificate that lapsed, licensing authority, date, reason for lapse, and whether the license or certificate was reinstated;
  14. Whether the applicant ever had a limitation imposed on a professional license or certificate and if so, the kind of license or certificate limited, licensing authority, date, nature of limitation, reason for limitation, and whether the limitation was removed;
  15. Whether the applicant ever had a professional license or certificate suspended or revoked and if so, the kind of license or certificate suspended or revoked, licensing authority, date, and reason for suspension or revocation;
  16. Whether the applicant ever was subject to disciplinary action with regard to a professional license or certificate and if so, the kind of license or certificate involved, licensing authority, date, and reason for and nature of the disciplinary action;
  17. Whether any unresolved complaint against the applicant is pending with a licensing authority, professional association, health care facility, or assisted living facility and if so, the nature of and where the complaint is pending;
  18. Whether the applicant ever was charged with or convicted of a felony or a misdemeanor, other than a minor traffic violation, in any court and if so, the nature of the offense, jurisdiction, and date of discharge; and
  19. Whether the applicant ever was pardoned from or had the record expunged of a felony conviction and if so, the nature of the offense, jurisdiction, and date of pardon or expunging.
- B.** In addition to the application form required under subsection (A), an applicant shall submit or have submitted on the applicant's behalf:
1. Education:

- a. Copy of the applicant's high school diploma or G.E.D., and
  - b. Certificate of completion issued within a year before the date of application from the training course described under R4-33-401(1)(b), or
  - c. Copy of the applicant's license issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2;
2. Documentation of 2,080 hours of paid work experience in a health-related field;
  3. Copy of current certification in adult cardiopulmonary resuscitation and first aid;
  4. Verification of license that is signed, authenticated by seal or notarization, and submitted directly to the Board by each agency that ever issued a professional license to the applicant;
  5. "Character Certification" form submitted directly to the Board by two individuals who have known the applicant for at least three years and are not related to, employed by, or employing the applicant;
  6. For every felony or misdemeanor charge listed under subsection (A)(18), a copy of documents from the appropriate court showing the disposition of each charge;
  7. For every felony or misdemeanor conviction listed under subsection (A)(18), a copy of documents from the appropriate court showing whether the applicant met all judicially imposed sentencing terms;
  8. Passport-size, color, full-face photograph of the applicant taken within the last 180 days and signed on the back by the applicant;
  9. Fingerprint clearance card.
    - a. Photocopy of the front and back of the applicant's fingerprint clearance card;
    - b. Proof of submission of an application for a fingerprint clearance card; or
    - c. If denied a fingerprint clearance card, proof that the applicant qualifies for a good-cause exception hearing under A.R.S. § 41-619.55;
  10. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board;
  11. Signed and notarized affidavit affirming that the information provided in the application is true and complete and authorizing others to release information regarding the applicant to the Board; and
  12. Fees required under R4-33-104(B)(1) and (B)(2).
- C.** If required by the Board under A.R.S. § 36-446.03(D), an applicant shall appear before the Board.
- D.** When the information required under subsections (A) and (B) is received and following an appearance before the Board required under subsection (C), the Board shall provide notice regarding whether the applicant may take the Arizona examination required under R4-33-401(3).
- E.** Because of the time required for the Board to perform an administrative completeness review under R4-33-103, an applicant shall submit the information required under subsections (A) and (B) at least 30 days before the applicant expects to take the Arizona examination.

**Historical Note**

Section R4-33-403 renumbered from R4-33-303 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).  
Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

**R4-33-404. Administration of Examination; Certificate Issuance**

- A.** The Board shall administer the Arizona examination at least twice each year at times and places specified by the Board.
- B.** The Board shall provide written notice to an applicant regarding whether the applicant passed the Arizona examination.
- C.** When an applicant passes the Arizona examination, the Board shall send the applicant a written notice that the Board will issue a certificate to the applicant when the applicant submits to the Board the fee required under R4-33-104(B)(4). If the applicant fails to submit the fee within six months of the Board's notice, the Board shall administratively close the applicant's file. An individual whose file is administratively closed may receive further consideration only by submitting a new application under R4-33-401.

**Historical Note**

Section R4-33-404 renumbered from R4-33-304 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).  
R4-33-404 corrected by adding a subsection (C) at the request of the Department, Office File No. M10-416 filed October 18, 2010 (Supp. 09-4).

**R4-33-405. Renewal Application**

- A.** The Board shall provide a certificate holder with notice of the need for certificate renewal. Failure to receive notice of the need for certificate renewal does not excuse a certificate holder's failure to renew timely.

- B. A manager certificate expires at midnight on June 30 of each odd-numbered year.
- C. To renew a manager certificate, the certificate holder shall submit the following information to the Board, on or before June 30, on a renewal application, which is available from the Board:
  1. Current address;
  2. Current home and business telephone numbers;
  3. Whether within the last 24 months the certificate holder was convicted of or pled guilty or no contest to a criminal offense, other than a minor traffic violation, in any court and if so, attach a copy of the original arrest record and final court judgment;
  4. Whether within the last 24 months the certificate holder was denied a professional license or had a professional license revoked, suspended, placed on probation, limited, or restricted in any way by a state or federal regulatory authority and if so, the kind of license, license number, issuing authority, nature of the regulatory action, and date;
  5. An affirmation that the number of hours of continuing education required under R4-33-501 has been completed;
  6. An affirmation that the certificate holder complies with the disclosure requirements under R4-33-408; and
  7. The certificate holder's dated and notarized signature affirming that the information provided is true and complete.
- D. In addition to the renewal application required under subsection (C), a certificate holder shall submit:
  1. A photocopy of the front and back of the certificate holder's fingerprint clearance card;
  2. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, which is a form available from the Board; and
  3. The renewal fee required under R4-33-104.
- E. An individual whose certificate expires because of failure to renew timely may apply for renewal by complying with subsections (C) and (D) if:
  1. The individual complies with subsections (C) and (D) on or before July 31,
  2. The individual pays the late renewal fee prescribed under R4-33-104, and
  3. The individual affirms that the individual has not acted as an assisted living facility manager since the certificate expired.
- F. An individual whose certificate expires because of failure to renew timely and who does not comply with subsection (E) may obtain a manager certificate only by complying with R4-33-401.

**Historical Note**

Section R4-33-405 renumbered from R4-33-305 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 10 A.A.R. 805, effective April 13, 2004 (Supp. 04-1).  
 Section R4-33-405 renumbered from R4-33-406 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1). Amended by final rulemaking at 15 A.A.R. 1975, effective November 3, 2009 (Supp. 09-4).

**R4-33-406. Inactive Status**

- A. The Board shall place a manager's certificate on inactive status if the manager:
  1. Is in good standing in Arizona,
  2. Submits a written request to the Board to be placed on inactive status, and
  3. Submits evidence that complies with R4-33-501(D) showing that the manager completed one hour of continuing education for each month in the current biennial period before the request to be placed on inactive status.
- B. Within seven days after receiving a request to be placed on inactive status, the Board shall provide the manager written confirmation of inactive status.
- C. A manager whose certificate is on inactive status is not required to comply with R4-33-501.
- D. An inactive certificate expires under R4-33-405 unless the manager timely submits a renewal application and the fee required under R4-33-104(B)(7).
- E. To resume active certificate status, a manager shall:
  1. Submit evidence that complies with R4-33-501(D) showing that the manager completed 12 hours of continuing education within the six months before requesting to resume active certificate status,
  2. Submit a written request to the Board to resume active certificate status, and
  3. Submit the fee required under R4-33-104(B)(4).
- F. The Board shall grant a request to resume active certificate status if the requirements of subsection (E) are met. Within seven days after receiving the written request to resume active certificate status, the Board shall send written notice to the manager granting or denying active status.

**Historical Note**

New Section R4-33-406 renumbered from R4-33-306 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Former R4-33-406 renumbered to R4-33-405; new R4-33-406 made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

**R4-33-407. Standards of Conduct; Disciplinary Action**

- A. A manager shall know and comply with all federal and state laws applicable to the operation of an assisted living facility.
- B. A manager shall not:
  - 1. Engage in unprofessional conduct as defined at A.R.S. § 36-446;
  - 2. Be addicted to or dependent on the use of narcotics or other drugs, including alcohol;
  - 3. Directly or indirectly permit an owner, officer, or employee of an assisted living facility to solicit, offer, or receive any premium, rebate, or other valuable consideration in connection with furnishing goods or services to residents unless the resulting economic benefit is directly passed to the residents;
  - 4. Directly or indirectly permit an owner, officer, or employee of an assisted living facility to solicit, offer, or receive any premium, rebate, or other valuable consideration for referring a resident to another person or place unless the resulting economic benefit is directly passed to the resident;
  - 5. Willfully permit the unauthorized disclosure of information relating to a resident or a resident's records;
  - 6. Discriminate against a resident or employee on the basis of race, sex, age, religion, disability, or national origin;
  - 7. Misrepresent the manager's qualifications, education, or experience;
  - 8. Aid or abet another person to misrepresent that person's qualifications, education, or experience;
  - 9. Defend, support, or ignore unethical conduct of an employee, owner, or other manager;
  - 10. Engage in any conduct or practice contrary to recognized community standards or ethics of an assisted living facility manager;
  - 11. Engage in any conduct or practice that is or might constitute incompetence, gross negligence, repeated negligence, or negligence that might constitute a danger to the health, welfare, or safety of a resident or the public;
  - 12. Procure or attempt to procure by fraud or misrepresentation a certificate or renewal of a certificate as an assisted living facility manager;
  - 13. Violate a formal order, condition of probation, or stipulation issued by the Board;
  - 14. Commit an act of sexual abuse, misconduct, harassment, or exploitation;
  - 15. Retaliate against any person who reports in good faith to the Board alleged incompetence or illegal or unethical conduct of any manager;
  - 16. Allow the manager's certificate to be displayed as required under R4-33-108(B) unless the manager has been appointed as specified in R4-33-410; or
  - 17. Manage an assisted living facility in violation of R4-33-411.
- C. The Board shall consider a final judgment or conviction for a felony, an offense involving moral turpitude, or direct or indirect elder abuse as grounds for disciplinary action under A.R.S. § 36-446.07, including denial of a certificate or certificate renewal.
- D. A manager who violates any provision of A.R.S. Title 36, Chapter 4, Article 6 or this Chapter is subject to discipline under A.R.S. § 36-446.07.

**Historical Note**

Section R4-33-407 renumbered from R4-33-307 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

**R4-33-408. Referral Requirements**

- A. A manager who is appointed by an assisted living facility that pays a fee to an individual or entity for referral of a resident to the assisted living facility shall ensure that the assisted living facility:
  - 1. Has on file a contract with the individual or entity making the referral;
  - 2. Maintains a file of the names of the residents referred by the individual or entity; and
  - 3. Obtains at the time of admission and maintains a statement, signed by the resident or the resident's representative or legal guardian, which discloses that:
    - a. A fee was paid for referring the resident to the assisted living facility;
    - b. The resident or the resident's representative or legal guardian was informed of the fee arrangement; and
    - c. The resident or the resident's representative or legal guardian was informed of any ownership interest between the assisted living facility and the individual or entity making the referral.
- B. A manager shall maintain the records required under subsection (A)(1) for five years and shall maintain the records required under subsections (A)(2) and (A)(3) for five years after the resident ceases to reside in the assisted living facility.

C. A manager shall make the records required under this Section available for review upon request by the Board.

**Historical Note**

Section R4-33-408 renumbered from R4-33-308 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

**R4-33-409. Certification Following Revocation**

An individual who wishes to be certified after the individual's certificate as an assisted living facility manager is revoked shall:

1. Not apply for certification until at least 12 months have passed since the revocation, and
2. Apply for certification under R4-33-401.

**Historical Note**

Section R4-33-409 renumbered from R4-33-309 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). New Section made by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

**R4-33-410. Notice of Appointment**

- A. A manager shall provide written notice to the Board, within 30 days, of being appointed manager of an assisted living facility or terminating an appointment.
- B. A manager shall include the following, as applicable, in a notice regarding the manager's appointment:
  1. Manager's name,
  2. Manager's certificate number,
  3. Name and address of the assisted living facility to which the manager is appointed,
  4. Date of appointment,
  5. Name and address of the assisted living facility at which the manager's appointment is terminated, and
  6. Date of termination.

**Historical Note**

Section R4-33-410 renumbered from R4-33-310 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section R4-33-410 renumbered to R4-33-402 by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). New Section made by final rulemaking at 14 A.A.R. 516, effective April 5, 2008 (Supp. 08-1).

**R4-33-411. Appointment as Manager of Multiple Assisted Living Facilities**

- A. An individual certified under R4-33-401 shall not be appointed to manage more than two assisted living facilities at one time.
- B. A individual certified under R4-33-401 who is appointed to manage two assisted living facilities shall:
  1. Ensure that the two assisted living facilities are no more than 25 miles apart;
  2. Designate in writing one or more individuals who are on the assisted living facility premises and accountable for the services provided at the assisted living facility when the appointed certified manager is not on the assisted living facility premises. A designated individual shall:
    - a. Be at least 21 years old;
    - b. Be a caregiver with at least three years' experience as a caregiver or hold a temporary certificate issued under R4-33-402; and
    - c. Never have had licensure or certification suspended or revoked by the Board;
  3. Ensure that the name of the designated individual is conspicuously displayed at all times in a manner that informs those seeking assistance who is accountable for the services provided;
  4. Place the written notice of designation required under subsection (B)(2) in the personnel file of the individual designated; and
  5. Be available to the individual designated under subsection (B)(2) by telephone or electronically within 60 minutes.

**Historical Note**

Section R4-33-411 renumbered from R4-33-311 by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Section repealed by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). New Section made by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

**ARTICLE 6. ASSISTED LIVING FACILITY MANAGER TRAINING PROGRAMS**

**R4-33-601. Definitions**

“Owner” means the person responsible for ensuring that an assisted living facility training program complies with this Article.

“Resident” means an individual who lives in an assisted living facility.

“Student cohort” means a group of individuals who begin participation in an assisted living facility training program at the same time.

#### Historical Note

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

#### **R4-33-602. Minimum Standards for Assisted Living Facility Manager Training Program**

- A. Organization and administration. The owner of an assisted living facility manager training program shall:
1. Provide the Board with a written description of the training program that includes:
    - a. Length of the training program in hours and days, and
    - b. Educational goals that demonstrate the training program is consistent with state requirements;
  2. Execute a written agreement with each assisted living facility at which students enrolled in the training program receive training that includes the following information:
    - a. The rights and responsibilities of both the facility and the training program,
    - b. The role and authority of the governing bodies of both the facility and the training program, and
    - c. A termination clause that provides time for students enrolled in the training program to complete training at the facility upon termination of the agreement;
  3. Develop and adhere to written policies and procedures regarding:
    - a. Attendance. Ensure that a student receives at least 40 hours of instruction;
    - b. Grading. Require a student to attain at least 75 percent on each theoretical examination or 75 percent on a comprehensive theoretical examination;
    - c. Reexamination. Inform students that a reexamination:
      - i. Addresses the same competencies examined in the original examination,
      - ii. Contains items different from those on the original examination, and
      - iii. Is documented in the student’s record;
    - d. Student records. Include the following information:
      - i. Records maintained,
      - ii. Retention period for each record,
      - iii. Location of records,
      - iv. Documents required under subsections (E)(1) and (E)(2), and
      - v. Procedure for accessing records and who is authorized to access records;
    - e. Student fees and financial aid, if any;
    - f. Withdrawal and dismissal;
    - g. Student grievances including a chain of command for disputing a grade;
    - h. Admission requirements including any criminal background or drug testing required;
    - i. Criteria for training program completion; and
    - j. Procedure for documenting that a student has received notice of Board requirements for certification, including the fingerprint clearance card requirement, before the student is enrolled;
  4. Date each policy and procedure developed under subsection (A)(3), review within one year from the date made and every year thereafter, update if necessary, and date the policy or procedure at the time of each review;
  5. Provide each student who completes the training program with evidence of completion, within 15 days of completion, which includes the following:
    - a. Name of the student;
    - b. Name and classroom location of the training program;
    - c. Number of classroom hours in the training program;
    - d. Date on which the training program was completed;
    - e. Board’s approval number of the training program; and

- f. Signature of the training program owner, administrator, or instructor;
- 6. Provide the Board, within 15 days of completion, the following information regarding each student who completed the training program:
  - a. Student's name, date of birth, Social Security number, address, and telephone number;
  - b. Student's examination scores as provided by the examining entity;
  - c. Name and classroom location of the training program;
  - d. Number of classroom hours in the training program;
  - e. Date on which the training program was completed; and
  - f. Board's approval number of the training program; and
- 7. Execute and maintain under subsections (E)(1) and (E)(2) the following documents for each student:
  - a. A skills checklist containing documentation the student achieved competency in the assisted living facility manager skills listed in R4-33-603(C), and
  - b. An evaluation form containing the student's responses to questions about the quality of the classroom experiences provided by the training program.
- B. Program administrator responsibilities.** The owner of an assisted living facility manager training program shall ensure that a program administrator performs the following responsibilities:
  - 1. Supervises and evaluates the training program,
  - 2. Uses only instructors who are qualified under subsection (C), and
  - 3. Makes the written policies and procedures required under subsection (A)(3) available to each student on or before the first day of the training program;
- C. The owner of an assisted living facility manager training program shall ensure that a program instructor:**
  - 1. Is a certified assisted living facility manager who:
    - a. Holds an assisted living facility manager certificate that is in good standing and issued under A.R.S. Title 36, Chapter 4;
    - b. Has held the assisted living facility manager certificate referenced in subsection (C)(1)(a) for at least five years;
    - c. Has not been subject to any disciplinary action against the assisted living facility manager certificate during the last five years; and
    - d. Has at least three years' experience within the last five years as an assisted living facility manager of record immediately before becoming a training program instructor;
  - 2. Performs the following responsibilities:
    - a. Plans each learning experience,
    - b. Accomplishes educational goals of the training program and lesson objectives,
    - c. Enforces a grading policy that meets the requirement specified in subsection (A)(3)(b),
    - d. Requires satisfactory performance of all critical elements of each assisted living facility manager skill specified under R4-33-603(C),
    - e. Prevents a student from performing an activity unless the student has received instruction and been found able to perform the activity competently,
    - f. Is present in the classroom during all instruction,
    - g. Supervises health-care professionals who assist in providing training program instruction, and
    - h. Ensures that a health-care professional who assists in providing training program instruction:
      - i. Is licensed or certified as a health-care professional,
      - ii. Has at least one year of experience in the field of licensure or certification, and
      - iii. Teaches only a learning activity that is within the scope of practice of the field of licensure or certification.
- D. Instructional and educational resources.** The owner of an assisted living facility manager training program shall provide or provide access to the following instructional and educational resources adequate to implement the training program for all

students and staff:

1. Current reference materials related to the level of the curriculum;
2. Equipment, including computers, in good working condition to simulate facility management;
3. Audio-visual equipment and media; and
4. Designated space that provides a clean, distraction-free, learning environment for accomplishing educational goals of the training program;

**E.** The owner of an assisted living facility manager training program shall:

1. Maintain the following training program records for three years:
  - a. Curriculum and course schedule for each student cohort;
  - b. Results of state-approved written and manual skills testing;
  - c. Evaluation forms completed by students, a summary of the evaluation forms for each student cohort, and measures taken, if any, to improve the training program based on student evaluations; and
  - d. Copy of all Board reports, applications, or correspondence related to the training program; and
2. Maintain the following student records for three years:
  - a. Name, date of birth, and Social Security number;
  - b. Completed skills checklist;
  - c. Attendance record including a record of any make-up class sessions;
  - d. Score on each test, quiz, and examination and, if applicable, whether a test, quiz, or examination was retaken;and
- e. Copy of the certificate of completion issued to the student as required under subsection (A)(5);

**F.** Examination and evaluation requirements. The owner of an assisted living facility manager training program shall ensure

that each student in the training program:

1. Takes an examination that covers each of the subjects listed in R4-33-603(C) and passes each examination using the standard specified in subsection (A)(3)(b);
2. Is evaluated and determined to possess the practical skills listed in R4-33-603(C);
3. Passes, using the standard specified in subsection (A)(3)(b), a final examination approved by the Board and given by a Board-approved provider; and
4. Does not take the final examination referenced in subsection (F)(3) more than two times. If a student fails the final examination referenced in subsection (F)(3) two times, the student is able to obtain evidence of completion only by taking the assisted living facility manager training program again;

**G.** Periodic evaluation. The owner of an assisted living facility manager training program shall allow a representative of the

Board or a state agency designated by the Board to conduct:

1. An onsite scheduled evaluation:
  - a. Before initial approval of the training program as specified under R4-33-604(D),
  - b. Before renewal of the training program approval as specified under R4-33-605, and
  - c. During a time of correction as specified under R4-33-606(B); and
2. An onsite unscheduled evaluation of the training program if the evaluation is in response to a complaint or reasonable cause, as determined by the Board; and

**H.** Notice of change. The owner of an assisted living facility manager training program shall provide the documentation and

information specified regarding the following changes within 10 days after making the change:

1. New training program administrator. Name and license number;
2. New instructor. Name, license number, and evidence of being qualified under subsection (C)(1);
3. Decrease in number of training program hours. Description of and reason for the change, a revised curriculum outline, and revised course schedule;
4. Change in classroom location. Address of new location and description of the new classroom; and
5. For a training program that is based within an assisted living facility:
  - a. Change in name of the facility. Former and new name of the assisted living facility; and

- b. Change in ownership of the facility. Names of the former and current owners of the assisted living facility.

#### **Historical Note**

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

#### **R4-33-603. Curriculum for Assisted Living Facility Manager Training Program**

**A.** The owner of an assisted living facility manager training program shall ensure that the training program consists of at least 40 hours of classroom instruction.

**B.** The owner of an assisted living facility manager training program shall provide a written curriculum plan to each student

that includes overall educational goals and for each required subject:

- 1. Measurable learner-centered objectives,
- 2. Outline of the material to be taught,
- 3. Time allotted to each unit of instruction, and
- 4. Learning activities or reading assignments.

**C.** The owner of an assisted living facility manager training program shall ensure that the training program includes instruction

regarding each of the following subjects:

- 1. Resident services management. Developing policies and procedures regarding:
  - a. Resident rights and confidentiality;
  - b. Developing, implementing, and updating resident service plans;
  - c. Resident agreements;
  - d. Providing social and recreational services;
  - e. Maintaining resident records and managing documentation systems;
  - f. Managing ancillary services;
  - g. Responding to and reporting specific incidents, accidents, and emergencies involving residents;
  - h. Managing dining services to meet resident needs;
  - i. Preventing abuse, neglect, and exploitation;
  - j. Accepting and retaining residents; and
  - k. Developing systems for managing residents with dementia, Alzheimer's Disease, or difficult behaviors;
- 2. Personnel management.
  - a. Complying with federal, state and local laws relating to hiring personnel;
  - b. Developing and implementing systems related to qualifying, orienting, training, and other recurring personnel requirements; and
  - c. Evaluating personnel;
- 3. Medication management.
  - a. Developing and evaluating policies and procedures for:
    - i. Medication management including medical restraints; and
    - ii. Non-medication intervention; and
  - b. Developing systems for:
    - i. Receiving and documenting doctors' orders;
    - ii. Ordering, refilling, and storing medications; and
    - iii. Recordkeeping related to receipt and administration of medication; and
- 4. Legal management.
  - a. Board-prescribed requirements for certification and re-certification,
  - b. Delegation,
  - c. Ethics,
  - d. Advanced directives and do-not-resuscitate orders,
  - e. Standards of conduct under R4-33-407,
  - f. Department of Health Services compliance and complaint inspections:
    - i. Statement of deficiencies,
    - ii. Plan for correction, and
    - iii. Enforcement action; and
  - g. Risk management and quality improvement;
- 5. Financial management.
  - a. Developing and implementing policies, procedures, and practices that comply with:

- i. State and local laws; and
    - ii. Generally accepted accounting principles regarding accounts receivable, accounts payable, payroll, resident funds, and refunds;
  - b. Developing, implementing, and evaluating facility budgeting including revenues, expenses, capital expenditures, and long-term projections; and
  - c. Maintaining appropriate insurance coverage; and
- 6. Physical environment management.
  - a. Complying with federal, state, and local laws regarding:
    - i. Occupational Safety and Health Administration,
    - ii. Americans with Disabilities Act, and
    - iii. Fire and safety requirements for assisted living facilities;
  - b. Preparedness for and prevention of fire, emergencies, and disasters;
  - c. Resident safety and security including evacuation, relocation, and transportation; and
  - d. Daily and preventative maintenance plans for buildings, equipment, and grounds.
- D. The owner of an assisted living facility manager training program shall ensure that the training program provides a student with at least:
  - 1. Eight hours of classroom instruction and skills practice in each of the subjects identified in subsections (C)(1) through (C)(4), and
  - 2. Four hours of classroom instruction and skills practice in each of the subjects identified in subsections (C)(5) and (C)(6).
- E. The owner of an assisted living facility manager training program shall ensure that the training program uses textbooks that are relevant to the subjects being taught and have been published within the last five years.

**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

**R4-33-604. Application for Approval of an Assisted Living Facility Manager Training Program**

- A. The owner of an assisted living facility manager training program shall ensure that no training is provided until the program is approved by the Board.
- B. To obtain approval of an assisted living facility manager training program, the owner of the training program shall submit to the Board an application packet that contains the following:
  - 1. Name, address, telephone number, and e-mail address of the owner;
  - 2. Name, address, telephone and fax numbers, and web site of the training program;
  - 3. Form of business organization under which the training program is operated and a copy of the establishing documents and organizational chart;
  - 4. A statement of whether the training program is based within an assisted living facility or other location;
  - 5. Name, telephone number, and license or certificate number of the program administrator required under R4-33-602(B);
  - 6. Name, telephone number, and certificate number of each program instructor and evidence that each program instructor is qualified under R4-33-602(C);
  - 7. A statement of whether the training program is accredited and if so, name of the accrediting body and date of last review;
  - 8. For all assisted living facilities at which the training program will provide classroom instruction:
    - a. Name, address, and telephone number of the assisted living facility;
    - b. Name and telephone number of a contact person at the assisted living facility;
    - c. License number of the assisted living facility issued by the Department of Health Services;
    - d. A statement of whether the license of the assisted living facility is in good standing; and

- e. Date and results of the most recent compliance inspection conducted by the Department of Health Services;
  - 9. Evidence of compliance with R4-33-602 and R4-33-603, including the following:
    - a. Written training program description, consistent with R4-33-602(A)(1), and an implementation plan that includes timelines;
    - b. Description of classroom facilities, equipment, and instructional tools available, consistent with R4-33-602(D);
    - c. Written curriculum, consistent with R4-33-603(B);
    - d. Skills checklist used to verify whether a student has acquired the necessary assisted living facility manager skills, consistent with R4-33-602(A)(7)(a);
    - e. Evaluation form required under R4-33-602(A)(7)(b) to enable students to assess the quality of the classroom experience provided by the training program;
    - f. Evidence of completion issued to a student under R4-33-602(A)(5);
    - g. Name of textbook used, author, publication date, and publisher; and
    - h. Copy of written policies and procedures required under R4-33-602(A)(3);
  - 10. Signature of the owner of the training program; and
  - 11. The fee prescribed under R4-33-104(C)(1).
- C.** The owner of an assisted living facility manager training program shall ensure that the application materials submitted under subsection (B) are printed on only one side of white, letter-sized paper, and are not bound in any manner.
- D.** After review of the materials submitted under subsection (B), the Board shall schedule an onsite evaluation of the training program and take one of the following actions:
- 1. If requirements are met, approve the training program for one year; or
  - 2. If requirements are not met, deny approval of the training program.
- E.** The owner of an assisted living facility manager training program that is denied approval by the Board may request a hearing regarding the denial by filing a written request with the Board within 30 days after service of the Board's order denying approval of the training program. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

#### **Historical Note**

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

**R4-33-605. Renewal of Approval of an Assisted Living Facility Manager Training Program**

- A.** The approval of an assisted living facility manager training program expires one year from the date of approval. If the approval of an assisted living facility manager training program expires, the owner of the training program shall immediately stop all training program activity.
- B.** To renew approval of an assisted living facility manager training program, the owner of the training program shall submit to the Board, no fewer than 60 and no more than 120 days before expiration of the current approval, an application packet that contains the following:
- 1. Name, address, e-mail, and telephone number of the owner;
  - 2. Name, address, telephone and fax numbers, and web site of the training program;
  - 3. Name, telephone number, and license number of the program administrator required under R4-33-602(B);
  - 4. Name, telephone number, and license number of each program instructor and evidence that each program instructor is qualified under R4-33-602(C);
  - 5. Written training program description, consistent with R4-33-602(A)(1);
  - 6. Written curriculum, consistent with R4-33-603(B);
  - 7. Since the time the training program was last approved:
    - a. Number of student-cohort classes to which training was provided,
    - b. Number of students who completed the training program,

- c. Results obtained on the Board-approved written and skills examinations for each student, and
  - d. Percentage of students who passed the examinations on the first attempt;
  - 8. For an assisted living facility at which the training program has started to provide classroom instruction since the training program was last approved, the information required under R4-33-604(B)(8);
  - 9. Evaluation form required under R4-33-602(A)(7)(b) to enable students to assess the quality of the classroom experience provided by the training program;
  - 10. Summary of evaluations for each student cohort, required under R4-33-602(E)(1)(c), and measures taken, if any, to improve the training program based on student evaluations;
  - 11. Evidence of completion issued to a student under R4-33-602(A)(5);
  - 12. Name of textbook used, author, publication date, and publisher;
  - 13. Copy of written policies and procedures required under R4-33-602(A)(3);
  - 14. Signature of the owner of the program; and
  - 15. The fee prescribed under R4-33-104(C)(2).
- C.** After review of the materials submitted under subsection (B), the Board shall ensure that the training program is evaluated at either an onsite or telephonic meeting. The program owner shall ensure that the program owner, program administrator, and all instructors are available to participate in the evaluation meeting.
- D.** The Board shall ensure that each training program receives an onsite evaluation at least every four years. An onsite evaluation includes visiting each assisted living facility at which the training program provides classroom instruction.
- E.** If the Board approves a training program following an onsite evaluation, no deficiencies were identified during the onsite evaluation, and no complaints are filed with the Board, the Board shall evaluate the training program under subsection (C) using a telephonic meeting for at least two years.
- F.** After conducting the evaluation required under subsection (C), the Board shall:
- 1. Renew approval of a training program that the Board determines complies with R4-33-602 and R4-33-603, or
  - 2. Issue a notice of deficiency under R4-33-606 to the owner of a training program that the Board determines does not comply with R4-33-602 or R4-33-603.
- G.** The owner of an assisted living facility manager training program that is issued a notice of deficiency by the Board under subsection (F)(2) may request a hearing regarding the deficiency notice by filing a written request with the Board within 30 days after service of the Board's order. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

#### **Historical Note**

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

**R4-33-606. Notice of Deficiency; Correction Plan; Disciplinary Action; Voluntary Termination**

- A.** Notice of deficiency. If the Board determines that an assisted living facility manager training program does not comply with the requirements in this Article, the Board shall issue a written notice of deficiency to the owner of the training program.
- The Board shall include the following in the notice of deficiency:
- 1. Description of each deficiency;
  - 2. Citation to the requirement in this Article with which the training program is not in compliance; and
  - 3. The time, to a maximum of three months, allowed by the Board for correction of the deficiencies.
- B.** Correction plan.
- 1. Within 10 days after service of a notice of deficiency under subsection (A), the owner of the served training program

- shall submit to the Board a written plan to correct the identified deficiencies;
2. The Board may conduct onsite or telephonic evaluations during the time for correction to assess progress towards compliance;
  3. The owner of a training program implementing a correction plan shall notify the Board when all corrections have been made; and
  4. After receiving notice under subsection (B)(3) or after the time provided under subsection (A)(3) has expired, the Board shall conduct an onsite evaluation to determine whether all deficiencies listed in the notice under subsection (A) have been corrected.
    - a. If the Board determines that all deficiencies have been corrected, the Board shall renew approval of the training program; or
    - b. If the Board determines that all deficiencies have not been corrected, the Board shall take disciplinary action under subsection (C).
- C. Disciplinary action.**
1. Under A.R.S. § 36-446.03(P), the Board shall issue a civil money penalty, suspend or revoke approval of an assisted living facility manager training program, or place the training program on probation if, following a hearing, the Board determines that the owner of the assisted living facility caregiver training program:
    - a. Failed to submit a plan of correction to the Board under R4-33-606(B) within 10 days after service of a notice of deficiency;
    - b. Failed to comply with R4-33-602 or R4-33-603 within the time set by the Board under R4-33-606(A)(3) for correction of deficiencies;
    - c. Failed to comply with a federal or state requirement;
    - d. Failed to allow the Board to conduct an evaluation under R4-33-602(G);
    - e. Failed to comply with R4-33-602(H);
    - f. Lent or transferred training program approval to another individual or entity or another training program, including one owned by the same owner;
    - g. Conducted an assisted living facility manager training program before obtaining Board approval;
    - h. Conducted an assisted living facility manager training program after expiration of program approval without submitting an application for renewal under R4-33-605;
    - i. Falsified an application for assisted living facility manager training program approval under R4-33-604 or R4-33-605;
    - j. Violated an order, condition of probation, or stipulation issued by the Board; or
    - k. Failed to respond to a complaint filed with the Board.
  2. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.
  3. The Board shall include in an order suspending or revoking approval of an assisted living facility manager training program the time and circumstances under which the owner of the suspended or revoked training program may apply again under R4-33-604 for training program approval.
- D. Voluntary termination.** If the owner of an approved assisted living facility manager training program decides to terminate the training program, the owner shall:
1. Provide written notice of the planned termination to the Board; and
  2. Ensure that the training program, including the instructors, is maintained according to this Article until the last student is transferred or completes the training program.

**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

### 36-446. Definitions

In this article, unless the context otherwise requires:

1. "Administrator" or "nursing care institution administrator" means a person who is charged with the general administration of a nursing care institution, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
2. "Assisted living facility" has the same meaning prescribed in section 36-401.
3. "Assisted living facility manager" means a person who has responsibility for the administration or management of an assisted living facility, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
4. "Assisted living facility training program" includes:
  - (a) Training required for assisted living facility manager certification.
  - (b) Training required by the department for assisted living facility caregivers.
5. "Board" means the board of examiners of nursing care institution administrators and assisted living facility managers.
6. "Department" means the department of health services.
7. "Directed care services" has the same meaning prescribed in section 36-401.
8. "Director" means the director of the department of health services.
9. "Nursing care institution" means an institution or other place, however named, whether for profit or not, including facilities operated by the state or a subdivision of the state, that is advertised, offered, maintained or operated for the express or implied purpose of providing care to persons who need nursing services on a continuing basis but who do not require hospital care or care under the daily direction of a physician. Nursing care institution does not include an institution for the care and treatment of the sick that is operated only for those who rely solely on treatment by prayer or spiritual means in accordance with the tenets of a recognized religious denomination. Nursing care institution also does not include nursing care services that are an integral part of a hospital licensed pursuant to this chapter.
10. "Unprofessional conduct" includes:
  - (a) Dishonesty, fraud, incompetency or gross negligence in the performance of administrative duties.
  - (b) Gross immorality or proselytizing religious views on patients without their consent.
  - (c) Other abuses of official responsibilities, which may include intimidation or neglect of patients.

#### 36-446.01. Licensure or certification requirements

- A. A nursing care institution shall not operate in this state except under the supervision of an administrator licensed pursuant to this article.

B. An assisted living facility shall not operate in this state except under the supervision of a manager certified pursuant to this article.

C. It is unlawful for any person who does not have a license or certificate, or whose license or certificate has lapsed or has been suspended or revoked, to practice or offer to practice skilled nursing facility administration or assisted living facility management or use any title, sign, card or device indicating that such person is an administrator or manager.

36-446.02. Board of examiners; terms; meetings; quorum; effect of vacancies; compensation

A. The board of examiners of nursing care institution administrators and assisted living facility managers is established consisting of nine members appointed by the governor.

B. The board shall include:

1. One administrator who holds an active license issued pursuant to this article.
2. One manager who holds an active license issued pursuant to this article.
3. One administrator of a nonprofit or faith-based skilled nursing facility.
4. One administrator of a proprietary skilled nursing facility.
5. Two managers of an assisted living center as defined in section 36-401.
6. One manager of an assisted living home as defined in section 36-401.
7. Two public members who are not affiliated with a nursing care institution or an assisted living facility.

C. Board members who are not affiliated with a nursing care institution or an assisted living facility shall not have a direct financial interest in nursing care institutions or assisted living facilities.

D. A board member shall not serve on any other board relating to long-term care during the member's term with the board.

E. The term of a board member automatically ends when that member no longer meets the qualifications for appointment to the board. The board shall notify the governor of the board vacancy.

F. Board members who are not affiliated with a nursing care institution or an assisted living facility shall be appointed for two year terms. Board members who are the administrator of a nursing care institution or the manager of an assisted living facility shall be appointed for three year terms.

G. A board member shall not serve for more than two consecutive terms.

H. The board shall meet at least twice a year.

I. A majority of the board members constitutes a quorum.

J. Board members are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent performing their duties under this chapter.

K. A board member who is absent from three consecutive regular meetings or who fails to attend more than fifty per cent of board meetings over the course of one calendar year vacates the board member's position. The board shall notify the governor of the vacancy.

36-446.02. Board of examiners; terms; meetings; quorum; effect of vacancies; compensation

A. The board of examiners of nursing care institution administrators and assisted living facility managers is established consisting of nine members appointed by the governor.

B. The board shall include:

1. One administrator who holds an active license issued pursuant to this article.
2. One manager who holds an active license issued pursuant to this article.
3. One administrator of a nonprofit or faith-based skilled nursing facility.
4. One administrator of a proprietary skilled nursing facility.
5. Two managers of an assisted living center as defined in section 36-401.
6. One manager of an assisted living home as defined in section 36-401.
7. Two public members who are not affiliated with a nursing care institution or an assisted living facility.

C. Board members who are not affiliated with a nursing care institution or an assisted living facility shall not have a direct financial interest in nursing care institutions or assisted living facilities.

D. A board member shall not serve on any other board relating to long-term care during the member's term with the board.

E. The term of a board member automatically ends when that member no longer meets the qualifications for appointment to the board. The board shall notify the governor of the board vacancy.

F. Board members who are not affiliated with a nursing care institution or an assisted living facility shall be appointed for two year terms. Board members who are the administrator of a nursing care institution or the manager of an assisted living facility shall be appointed for three year terms.

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I. A majority of the board members constitutes a quorum.

J. Board members are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent performing their duties under this chapter.

K. A board member who is absent from three consecutive regular meetings or who fails to attend more than fifty per cent of board meetings over the course of one calendar year vacates the board member's position. The board shall notify the governor of the vacancy.

36-446.03. Powers and duties of the board; fees

A. The board may adopt, amend or repeal reasonable and necessary rules and standards for the administration of this article in compliance with title XIX of the social security act, as amended.

B. The board by rule may adopt nonrefundable fees for the following:

1. Initial application for certification as an assisted living facility manager.
2. Examination for certification as an assisted living facility manager.
3. Issuance of a certificate as an assisted living facility manager, prorated monthly.
4. Biennial renewal of a certificate as an assisted living facility manager.
5. Issuance of a temporary certificate as an assisted living facility manager.
6. Readministering an examination for certification as an assisted living facility manager.
7. Issuance of a duplicate certificate as an assisted living facility manager.
8. Reviewing the sponsorship of continuing education programs, for each credit hour.
9. Late renewal of an assisted living facility manager certificate.
10. Reviewing an individual's request for continuing education credit hours, for each credit hour.
11. Reviewing initial applications for assisted living facility training programs.
12. Annual renewal of approved assisted living facility training programs.

C. The board may elect officers it deems necessary.

D. The board shall apply appropriate techniques, including examinations and investigations, to determine if a person meets the qualifications prescribed in section 36-446.04.

E. On its own motion or in response to any complaint against or report of a violation by an administrator of a nursing care institution, or a manager of an assisted living facility, the board may conduct investigations, hearings and other proceedings concerning any violation of this article or of rules adopted by the board or by the department.

F. In connection with an investigation or administrative hearing, the board may administer oaths and affirmations, subpoena witnesses, take evidence and require by subpoena the production of documents, records or other information in any form concerning matters the board deems relevant to the investigation or hearing. If any subpoena issued by the board is disobeyed, the board may invoke the aid of any court in this state in requiring the attendance and testimony of witnesses and the production of evidence.

G. Subject to title 41, chapter 4, article 4, the board may employ persons to provide investigative, professional and clerical assistance as required to perform its powers and duties under this article. Compensation for board employees shall be as determined pursuant to section 38-611. The board may contract with other state or federal agencies as required to carry out this article.

H. The board may appoint review committees to make recommendations concerning enforcement matters and the administration of this article.

I. The board by rule may establish a program to monitor licensees and certificate holders who are chemically dependent and who enroll in rehabilitation programs that meet board requirements. The board may take disciplinary action if a licensee or a certificate holder refuses to enter into an agreement to enroll in and complete a board approved rehabilitation program or fails to abide by that agreement.

J. The board shall adopt and use an official seal.

K. The board shall adopt rules for the examination and licensure of nursing care institution administrators and the examination and certification of assisted living facility managers.

L. The board shall adopt rules governing payment to a person for the direct or indirect solicitation or procurement of assisted living facility patronage.

M. The board must provide the senate and the house of representatives health committee chairmen with copies of all board minutes and executive decisions.

N. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.

O. The board by rule shall prescribe standards for assisted living facility training programs.

P. The board may:

1. Grant, deny, suspend or revoke approval of, or place on probation, an assisted living facility training program.

2. Impose a civil penalty on an assisted living facility training program that violates this chapter or rules adopted pursuant to this chapter.

36-446.04. Qualifications; period of validity; exemption

A. The board shall issue a license as a nursing care institution administrator pursuant to its rules to any person who meets the following qualifications:

1. Is of good character.

2. Has satisfactorily completed a course of instruction and training approved by the board that:

(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by nursing care institutions.

(b) Includes a thorough background in the laws and rules governing the operation of nursing care institutions and the protection of the interests of the patients in nursing care institutions.

(c) Includes thorough training in elements of good health care facilities administration.

3. Has passed an examination administered by the board designed to test for competency in the subject matter referred to in this subsection.

4. Has met one of the following fingerprinting requirements:

(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

(b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55.

B. A person who is licensed pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's license.

C. The board shall issue a certificate as an assisted living facility manager pursuant to its rules to a person who meets the following qualifications:

1. Is of good character.

2. Has satisfactorily completed a course of instruction and training approved by the board that:

(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by an assisted living facility.

(b) Includes a thorough background in the laws governing the operation of assisted living facilities and the protection of the interests of the patients in assisted living facilities.

(c) Includes thorough training in elements of assisted living facility administration.

3. Has passed an examination administered by the board that is designed to test for competency in the subject matter prescribed in this subsection.

4. Provides documentation satisfactory to the board that the applicant has completed two thousand eighty hours of paid work experience in a health related field within the preceding five years as prescribed by board rule.

5. Has met one of the following fingerprinting requirements:

(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

(b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55.

D. A person who is certified pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's certificate.

E. In lieu of the requirements contained in subsection A, paragraph 2 or subsection C, paragraph 2, an applicant may present satisfactory evidence to the board of sufficient education and training in the areas listed in that paragraph.

F. A license is nontransferable and remains in effect until the following June 30 of an even numbered year, at which time the license may be renewed if the licensee otherwise

complies with this article and unless the license has been surrendered, suspended or revoked.

G. A certificate is nontransferable and remains in effect until the following June 30 of an odd numbered year, at which time the certificate may be renewed if the certificate holder otherwise complies with this article and the certificate has not been surrendered, suspended or revoked.

H. This section does not apply to managers of adult foster care homes as defined in section 36-401.

#### 36-446.05. Reciprocity; present administrators

The board may issue a nursing care institution administrator's license, without examination or with partial examination, to any person who holds a current license from another state or territory of the United States provided the standards for licensure in such other state or territory of the United States are at least substantially equivalent to those prevailing in this state, and provided that the applicant is otherwise qualified.

#### 36-446.06. Temporary licenses and certificates

A. The board may issue a temporary nursing care institution administrator's license or assisted living facility manager's certificate to individuals determined to meet standards established by the board and revoke or suspend temporary licenses or certificates previously issued by the board in any case where the individual holding a license or certificate is determined to have substantially failed to conform to the requirements of such standards during the term of the temporary license or certificate.

B. A temporary license or certificate is automatically revoked if the licensee or certificate holder fails either the state or national examination during the term of the license.

C. Temporary licenses or certificates may be issued without examination, for a single nonrenewable period of one hundred fifty days, to a qualified individual for the purpose of enabling the individual to fill a nursing care administrator or assisted living facility manager position. Qualifications for a temporary license or certificate shall include good character and the ability to meet such other standards as are established by the board.

D. An applicant for a temporary license or certificate shall not have failed a state or national examination either before or after applying for the temporary license or certificate.

#### 36-446.07. Disciplinary actions; grounds for disciplinary action; renewal; continuing education; inactive status; hearings; settlement; judicial review; admission by default; military members

A. The board may suspend or revoke the license of any nursing care institution administrator, censure or place on probation any licensed nursing care institution administrator or deny a license as a nursing care institution administrator to any person for any of the following reasons:

1. Conviction of a felony or conviction of any misdemeanor involving moral turpitude.
2. Obtaining or renewing a license by fraud or deceit.

3. Unprofessional conduct.
4. Practicing without biennial licensure.
5. Addiction to or dependency on drugs or alcohol.
6. Wrongful transfer of a license or falsely impersonating another licensee.
7. Unauthorized disclosure of information relating to a patient or a patient's records.
8. Payment to any person for solicitation or procurement, either directly or indirectly, of nursing home patronage.
9. Violation of this article or a rule adopted pursuant to this article.

B. The board may suspend or revoke the certificate of an assisted living facility manager, censure or place on probation an assisted living facility manager or deny a certificate as an assisted living facility manager to a person for any of the following reasons:

1. Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
2. Obtaining or renewing a certificate by fraud or deceit.
3. Unprofessional conduct.
4. Practicing without biennial certification.
5. Addiction to or dependency on drugs or alcohol.
6. Wrongful transfer of a certificate or falsely impersonating another certificate holder.
7. Unauthorized disclosure of information relating to a resident or a resident's records.
8. Violation of this article or a rule adopted pursuant to this article.

C. The board may impose a civil penalty in an amount of not to exceed five hundred dollars on any nursing care institution administrator or assisted living facility manager who violates this article or any rule adopted pursuant to this article. Actions to enforce the collection of these penalties shall be brought in the name of this state by the attorney general or the county attorney in the justice court or the superior court in the county in which the violation occurred. Penalties imposed under this section are in addition to and not in limitation of other penalties imposed pursuant to this article.

D. The board may file a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license of the administrator or the certificate of the manager, there is sufficient evidence for the board to notify the administrator or manager of its concern.

E. Every holder of a nursing care institution administrator's license shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed at least fifty hours of continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in such a manner or under such circumstances as would constitute grounds for taking any of the disciplinary actions permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning an administrator and shall retain in the administrator's file a copy of each such

complaint or report and the action taken on it, if any. The board shall review and consider the administrator's file in determining whether to renew the administrator's license.

F. Except as provided in subsection R of this section, every holder of an assisted living facility manager's certificate shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in a manner or under circumstances that constitute grounds for taking disciplinary action permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning a manager and shall retain in the manager's file a copy of each complaint or report and the action taken on it, if any. The board shall review and consider the manager's file in determining whether to renew the manager's certificate.

G. Except as provided in subsection R of this section, failure on the part of any licensed nursing care institution administrator or certified assisted living facility manager to furnish evidence of having attended the required continuing education hours during the preceding two years shall preclude renewal of the license or certificate unless the continuing education requirement is fulfilled within one hundred twenty days.

H. On written request to the board, a nursing care institution administrator in good standing may cause the administrator's name and license to be transferred to an inactive list. Any nursing care institution administrator on inactive license status shall pay a license renewal fee. On written request to the board, and subsequent approval by the board, a nursing care institution administrator on inactive license status may resume active license status on meeting twenty-five hours of continuing education requirements within six months and payment of the current fee.

I. On written request to the board, the board shall transfer an assisted living facility manager in good standing to an inactive list. An assisted living facility manager on inactive certificate status shall pay a certificate renewal fee prescribed by the board of not more than one hundred dollars every two years. On written request to the board, and subsequent approval by the board, an assisted living facility manager on inactive certificate status may resume active certificate status on meeting requirements for six hours of continuing education within six months and payment of the current fee.

J. Suspension, revocation or denial of renewal of a license or certificate or censure or probation of a licensee or certificate holder by the board becomes effective only on the board's first giving the licensee or certificate holder prior written notice and affording the licensee or certificate holder the right to request a hearing within thirty-five days of the receipt of notice. A hearing is not required before the denial of an original application for a license or a certificate. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.

K. Any person wishing to make a complaint against a licensee or certificate holder under this article shall file a written complaint with the board within one year from the date of the action causing the complaint. If the board determines that the charges made in the complaint are sufficient, if true, to warrant suspension or revocation of a license or

certificate issued under this article or censure or probation of a licensee or certificate holder under this article, it shall issue an order fixing the time and place for a hearing and requiring the licensee or certificate holder complained against to appear and answer the complaint. The order shall have affixed to it a copy of the complaint, and both shall be served on the licensee or certificate holder either personally or by certified mail sent to the licensee's or the certificate holder's last known address at least thirty-five days before the date set for the hearing. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.

L. The board and an administrator or manager may enter into a settlement of any matter under investigation either before or after a notice of the hearing has been issued if the board determines that the proposed settlement adequately protects the public safety, health and welfare. The board shall record the terms of each settlement entered into and shall make the record available for public inspection.

M. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

N. If the board has initiated an investigation pursuant to this section, the board may continue the investigation and discipline the person under investigation even if that person resigns from practice after the board has initiated the investigation.

O. A licensee or certificate holder shall respond in writing to the board within thirty-five days after the board serves the complaint and notice of a formal hearing by certified mail. Service is complete on the date the board places the notice in the mail. The board shall consider a licensee's or certificate holder's failure to respond to the notice within thirty-five days as an admission by default to the allegations stated in the complaint. The board may then take disciplinary action against the licensee or certificate holder without conducting a formal hearing.

P. The board may set aside an admission by default if a licensee or certificate holder shows good cause. A licensee or certificate holder who applies to the board to set aside an admission by default shall demonstrate the following to the satisfaction of the board:

1. The failure to respond to the notice of the board was due to excusable neglect.
2. The licensee or certificate holder has a meritorious defense.
3. The licensee or certificate holder made prompt application to the board for relief.

Q. The board shall not consider an application to set aside an admission by default filed later than one hundred eighty days after the board's entry of the admission by default.

R. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard or the United States armed forces reserves shall not expire while the member is serving on federal active duty and shall be extended one hundred eighty days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the board of the federal active duty status of the member. A license or certificate issued pursuant to this chapter to any member serving in the regular component of the United States armed forces shall be extended one hundred eighty days from the date of expiration, provided that the member, or the legal

representative of the member, notifies the board of the federal active duty status of the member. If the license or certificate is renewed during the applicable extended time period, the member is responsible only for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as late fees or delinquency fees. The member, or the legal representative of the member, shall present to the board a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

S. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces shall not expire and shall be extended one hundred eighty days from the date the military member is able to perform activities necessary under the license or certificate if the member both:

1. Is released from active duty service.
2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license, certificate or registration.

36-446.08. Nursing care institution administrators' licensing and assisted living facility managers' certification fund; investment of fund monies

A. The nursing care institution administrators' licensing and assisted living facility managers' certification fund is established.

B. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected pursuant to this article in the state general fund and deposit the remaining ninety per cent in the nursing care institution administrators' licensing and assisted living facility managers' certification fund. All monies derived from civil penalties collected pursuant to section 36-446.07, subsection C shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

C. Monies deposited in the nursing care institution administrators' licensing and assisted living facility managers' certification fund are subject to the provisions of section 35-143.01.

D. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

36-446.09. Violations; classification

A. Any person who manages, directs and controls the operation of a nursing care institution or an assisted living facility without a current and valid license or certificate as required by this article or who otherwise violates any provisions of this article is guilty of a class 2 misdemeanor. Each day of violation shall constitute a separate offense.

B. Action taken under subsection A shall not be a bar to enforcement of this article and the standards and rules issued and adopted pursuant to this article, by injunction or other appropriate remedy, and the board may institute and maintain in the name of this state

any such enforcement proceeding.

36-446.10. Confidentiality of records; release of complainant's name and nature of complaint

A. Except as provided in subsection B, all records concerning a pending investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

B. During a pending investigation, the board shall inform the administrator or manager who is the subject of the complaint of the name of the complainant and the nature of the complaint if so requested.

36-446.11. Relief from civil liability

Members, employees and agents of the board and members of review committees shall not be held civilly liable for acts done or actions taken by any of these persons if such persons act in good faith following the requirements of this article. A person who in good faith reports or provides information to the board shall not be held civilly liable as a result of doing so.

36-446.12. Fees

A. The board by rule shall establish nonrefundable fees and penalties for the following for nursing care institution administrators:

1. Initial application.
2. Examination for licensure as a nursing care institution administrator.
3. A license as a nursing care institution administrator.
4. Renewing an active biennial license.
5. Renewing an inactive biennial license.
6. A temporary license as a nursing care institution administrator.
7. Readministering the state examination.
8. Readministering the national examination.
9. A duplicate license.
10. Late renewal of a license.
11. Certifying licensure status.
12. Reviewing the sponsorship of continuing education programs, for each credit hour.
13. Reviewing an individual's request for continuing education credit hours, for each credit hour.

B. The board shall prorate on a monthly basis fees paid for an initial license as a nursing care institution administrator.

C. The board by rule shall limit by percentage the amount it may increase a fee above the

amount of a fee previously prescribed by the board pursuant to this section.

**36-446.13. Unlawful act; unlicensed operation; injunction**

- A. On application by the board, the superior court may issue an injunction to enjoin the activities of a person who purports to be licensed pursuant to this article or who is engaging in the activities of a nursing care institution administrator without a license.
- B. In a petition for injunction filed pursuant to this section, it is sufficient to charge that the respondent on a certain day in a named county engaged in the activities of a nursing care institution administrator without a license and without being exempt from the licensing requirements of this article.
- C. For the purposes of this section, damage or injury is presumed.
- D. A petition for an injunction to enjoin unlicensed activities shall be filed in the name of this state in the superior court in the county where the respondent resides or may be found or in Maricopa county. On request of the board, the attorney general shall file the injunction.
- E. Issuance of an injunction does not relieve the respondent from being subject to other proceedings as provided in this article.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 16, Article 5, Licensing Speech-Language Pathologist Assistants



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 30, 2019

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (F19-0706)**  
Title 9, Chapter 16, Article 5, Licensing Speech-Language Pathologist Assistants

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This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to the rules in Title 9, Chapter 16, Article 5 regarding licensing for speech-language pathologist assistants.

The Department indicates that these rules were first promulgated in December 2009 and effective January 2010. The first 5YRR for these rules was due in December 2014. However, the rules were substantially amended through an exempt rulemaking in July 2014. On September 12, 2014, the Council granted the Department's request to reschedule the 5YRR for these rules. The rescheduled report was due on April 30, 2019. Thus, this is the first 5YRR for these rules.

### **Proposed Action**

The Department intends to amend the rules based on the issues identified in the 5YRR. It plans to submit an expedited rulemaking to the Council by December 31, 2019.

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

Yes. The Department cites to both general and specific authority for the rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Article 5 rules were last amended in 2014 through the exempt rulemaking process, so there is no economic, small business, and consumer impact statement (EIS) available. As described above, this is the first 5YRR for these rules. The Article 5 rules establish licensing requirements for speech-language pathologist assistants (SLPAs).

The stakeholders include the Department, SLPAs, and the general public.

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

The Department indicates that the rules provide the least intrusive and least costly method of achieving the regulatory objective. The Department states that the benefits of having effective and understandable rules outweigh the costs. In this 5YRR, the Department identifies numerous non-substantive issues with the rules. It plans to submit an expedited rulemaking to the Council by December 31, 2019 to address these issues.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. For the reasons specified in the report, the Department indicates that the following rules could be amended to improve their clarity, conciseness, and understandability:

- R9-16-501 (Definitions);
- R9-16-502 (Application for an Initial License);
- R9-16-503 (License Renewal);
- R9-16-504 (Continuing Education); and
- R9-16-505 (Time-frames).

The Department also states that R9-16-503 could be amended to make it consistent with the initial application in R9-16-502(A)(1)(f) and (g), (A)(3), and (A)(4).

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

Yes. The Department indicates that the rules are enforced as written.

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

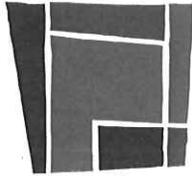
Not applicable. There is no corresponding federal law.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

A general permit is not applicable. Under A.R.S. § 36-1902(A)(5), the Department is authorized to license persons who apply for a license and possess all other qualifications required for licensure as a speech-language pathologist assistant.

9. **Conclusion**

The Department intends to submit an expedited rulemaking to the Council by December 31, 2019 to address the issues identified in the report. These amendments will result in rules that are more clear, concise, understandable, and effective. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

April 24, 2019

Connie Wilhelm, Vice-Chair  
Arizona Department of Administration  
100 N. 15<sup>th</sup> Avenue, Suite 305  
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 16, Article 5 Licensing Speech-Language Pathologist Assistants

Dear Ms. Wilhelm:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 16, Article 5 is due to the Council no later than April 30, 2019. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 16, Article 5 and is enclosing a report to the Council for this rule.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. The report contains a summary of the Department's review for all the rules and is in the format of the Council's report template. Included in the package are the rules reviewed and the general and specific authority. As described in the report, the Department plans to amend the rules in 9 A.A.C. 16, Article 5 to address the matters identified in this report and submit a Notice of Final Expedited Rulemaking to Governor's Regulatory Review Council by December 31, 2019.

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

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a white rectangular area.

Robert Lane  
Director's Designee

RL:tk  
Enclosures

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

**Arizona Department of Health Services**

**Five-Year-Review Report**

**Title 9. Health Services**

**Chapter 16. Department of Health Services – Occupational Licensing**

**Article 5. Licensing Speech-Language Pathologist Assistants**

**April 2019**

**1. Authorization of the rule by existing statutes**

Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A)(18), and 36-136(G)

Implementing statutes: A.R.S. §§ 36-1902(B)(5) and 36-1940.04

**2. The objective of each rule:**

Rule	Objective
R9-16-501	The objective of the rule is to define the terms used in Article 5 so requirements are clear and terms are interpreted consistently.
R9-16-502	The objective of the rule is to specify the requirements for submitting an initial application packet for licensure as a SLPA.
R9-16-503	The objective of the rule is to specify the requirements for submitting a renewal application packet for licensure as a SLPA.
R9-16-504	The objective of the rule is to specify continuing education requirements.
R9-16-505	The objective of the rule is to specify the process for Department approval of an initial application, a renewal application, and continuing education.
Table 5.1	The objective of the table is to specify time-frame duration required for Department's approval of an initial application, renewal application, and continuing education.
R9-16-506	The objective of the rule is to specify the types of and the criteria to consider when determining a disciplinary action the Department may take.
R9-16-507	The objective of the rule is to provide a licensee with a method for: notifying the Department of a change affecting licensure and requesting a duplicate license.

**3. Are the rules effective in achieving their objectives?**

Yes √ No \_\_

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

Rule	Explanation
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R9-16-501 through R9-16-505	The rules are effective; however as identified in paragraphs 4 and 6 of this report, the rules could be improved to increase understandability of the rules by simplifying and clarifying some requirements, updating antiquated language and outdated citations and references, and making technical and grammatical changes.
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4. **Are the rules consistent with other rules and statutes?** Yes  No

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation
R9-16-503	The rule would be consistent with initial application in R9-16-502(A)(1)(f) and (g), (A)(3), and (A)(4) if the renewal application included collecting information regarding whether a license for the applicant has been revoked or suspended by a state and whether the applicant is currently ineligible for licensure in any state.

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

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

Rule	Explanation

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

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation
R9-16-501	The rule is understandable; however, the rule would be clearer if the Department updated the definitions in this Section. For example, the regional accrediting organizations listed in definition (1)(a), (c), (e), and (f) have been re-titled; in definition (7), the word "continuous" is unclear; in definition (9), the word "documented" should be deleted, since the word is not used in the Article; and in definition (15), the reference to A.R.S. § 36-1940.04 should clarify specific subsections (E) and (F).
R9-16-502	The rule is understandable and would be clearer if antiquated term to "format provided by the Department" was changed to "a Department-provided format." Additionally, the rule

	would be clearer and less burdensome if: in subsection (A)(1)(i), the attestation included an applicant authorizing the Department to verify all information provided in the applicant’s application packet; in subsection (A)(5), the requirement was simplified to require citizenship or alien status documentation that complies with statutes; and in subsection (A)(6), the minimum semester credit hours for general education and speech-language pathology technical course work specified in A.R.S. § 36-1940.04 were added. A.R.S. § 36-1940.04(A) requires no less than 20 semester credit hours in both general education and speech-language pathology technical course work. Subsection (A)(6) could also be simplified, if the word “official” were deleted and if “other types of documentation” were added.
R9-16-503	The rule is understandable and would be clearer if the antiquated language “format provided by the Department” were changed to “a Department-provided format.” Further, the rule would be clearer and less burdensome if in subsection (A)(1)(h) the attestation included both (1) an applicant authorizing the Department to verify all information provided in the applicant’s application packet and (2) verification of completed continuing education. Amending subsection (A)(1)(h) to add completed continuing education verification would also streamlines the continuing education requirements in R9-15-504.
R9-16-504	The rule is understandable, however, the rule would be clearer if the Department updated a reference made in subsection (C)(9) to “Arizona Medical Association,” since “Arizona Society of Otolaryngology Head and Neck Surgery” is no longer used. Also, R9-16-504 would be less burdensome and simplified if a requirement for completed continuing education were added in R9-16-503, as previously stated. If added, R9-16-504 subsections (D), (E), and (F) would no longer be required and removed.
R9-16-505	The rule is understandable, however, would be clearer if subsection (A)(1) were moved to R9-16-502 as new subsection (A) and if subsections (A)(2) and (3) were moved to subsection (C). The rule would also be clearer if the Department, added an ‘exception for an extension’ that an applicant and the Department may agree to and changed “within 30 calendar days” to “within the specified calendar days” in subsection (C)(4). In addition, if R9-16-503 were changed to include completed continuing education verification, several references related to “continuing education course” in subsection (B and (C) could be removed, as well as, the continuing education approval specified in Table 5.1.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No √

*If yes, please fill out the table below:*

Commenter	Comment	Agency's Response

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

Laws 2006, Ch. 390, § 5 added Arizona Revised Statutes (A.R.S.) § 36-1940.04 to establish licensing requirements for speech-language pathologist assistants. The Arizona Department of Health Services (Department) drafted new rules through regular rulemaking in 2009 for licensing speech-language pathologist assistants (SLPAs) consistent with A.R.S. Title 36, Chapter 17. The Department created a new Article 5 in the Arizona Administrative Code (A.A.C.) Title 9, Chapter 16 for licensing SLPAs. Additionally, Laws 2013, Ch. 33 amended A.R.S. Title 36, Chapter 17 affecting SLPAs licensure. In response, the Department through exempt rulemaking amended Article 5 and filed the Notice of Exempt Rulemaking June 30, 2014. The changes to the rules include: extending licensure time period, changing licensing fees and continuing education requirements, revising antiquated definitions and terms, and making minor technical clarifications. Through the 2014 exempt rulemaking, no economic, small business, and consumer impact statement (EIS) or economic, small business, and consumer impact comparison was required. This five-year-review report (report) is the Department's first Article 3 report since the rules were substantially revised through exempt rulemaking.

As of March 2019, the Department has licensed 1,282 licensed SLPAs. During fiscal year 2018, the Department issued 243 initial licenses and 502 renewal licenses. Additionally, the Department conducted five complaint investigations for SLPAs and two applications were withdrawn or denied. The Department believes affected persons include applicants, licensees, speech-language pathologists, businesses or schools that employ SLPAs, and the Department. In assessing the economic, small business, and consumer impact of the new rule, the Department provides a summary of the changes considered.

In the exempt rulemaking Article 5, the Department renumbered and retitled all but one Section. In R9-16-501, Definitions, three definitions were added for "applicant," "calendar day," and "semester credit hour." The existing definition related to "CE" were consolidated to better clarify "continuing education." And definitions for "good moral character" and "speech-language pathologist services" were removed. Some of the requirements in old R9-16-502, License Qualifications, were moved to new R9-16-502, Application for an Initial License, such as the number of required hours for clinical interaction; revocation and suspension of a license; and licensure ineligibility. The remaining requirements in old R9-16-502 were removed. Old R9-16-503, was renumber to new R9-16-302, Application for an Initial License, and requirements were changed to update antiquated language, outdated citations and references, and license fee. Changes also included clarifying conviction of a felony,

revocation and suspension, and licensure ineligibility and two new requirements for allowing the Department to submit supplemental requests and proof of citizenship were added. Old R4-15-504 was renumbered to new R9-16-503, License Renewal. The rulemaking clarified the required information for an applicant who has been convicted of a felony or misdemeanor; and documentation required for completed continuing education. Additionally, the licensing renewal fee in subsection (A)(3) was changed and subsection (C) was simplified, removing subsections (C)(1) and (2).

In new R9-16-504, Continuing Education, the requirements for an applicant to request approval for a continuing education course were consolidated. Other changes included removing a requirement to maintain continuing education records and adding a list of Department-approved organizations proving continuing education courses. The title for Section R9-16-505 was changed from “License Application and CE Approvals” to “Time-frames.” The requirements in the rule are generally the same. Minor changes were made to update antiquated language and outdated citations and references. And the regular license time period of two years was clarified in subsection (A)(1). Similarly, in new R9-16-506 minor changes in subsection (A) were made to update antiquated language and remove citation to A.R.S. §§ 36-1901 through 36-1940; since applicable statutory authority is stated in subsections (A)(1), (2), and (3). Lastly, in new R9-16-507, the Section title was changed to add “Changes Affecting a License or a Licensee” and requirements for submitting a notice, including types of changes, were added.

The Department expects that the changes made in Article 5, including extending the licensure time period to two years, through the 2014 rulemaking, do not increase administrative burden for affected persons. Further, the Department expects that clarifying initial application, renewal application, and continuing education requirements do not increase applicants and licensees’ costs; and rather, increases benefits for spending less time completing a renewal application and providing continuing education information due to the licensing period being extended to two years. The Department also anticipates that affected persons have received increased benefits for having updated rules that are more effective, clear, and understandable. The Department believes that the benefits of having the rules outweigh the costs associated with the rules.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No √

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

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The rules were first promulgated in December 2009 and effective January 2010. The first five-year-review report was due December 2014. However, the rules were substantially amended through an exempt rulemaking in July 2014. On

September 12, 2014, the Department's request for rescheduling the Report was granted and changed the Report due date for Article 5 to April 31, 2019. This is the first five-year-review report for 9 A.A.C. 16, Article 5.

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

The Department believes that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

**12. Are the rules more stringent than corresponding federal laws? Yes \_\_\_ No √**  
*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

Federal laws are not applicable to the rules in 9 A.A.C. 16, Article 5.

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A general permit is not applicable. The Department, pursuant to A.R.S. § 36-1902(A)(5), is authorized to license persons who apply for a license and possess all other qualifications required for licensure as a speech-language pathologist assistant.

**14. Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The Department plans to amend the rules in 9 A.A.C. 16, Article 5 to address matters identified in this five-year-review report in an expedited rulemakings. The Department plans to submit a Notice of Final Expedited Rulemaking to the Council by December 31, 2019.

## ATTACHMENT A – CURRENT RULES

### ARTICLE 5. LICENSING SPEECH-LANGUAGE PATHOLOGIST ASSISTANTS

#### R9-16-501. Definitions

In addition to the definitions in A.R.S. § 36-1901, the following definitions apply in this Article unless otherwise specified:

1. "Accredited" means approved by the:
  - a. New England Association of Schools and Colleges,
  - b. Middle States Commission on Higher Education,
  - c. North Central Association of Colleges and Schools,
  - d. Northwest Commission on Colleges and Universities,
  - e. Southern Association of Colleges and Schools, or
  - f. Western Association of Schools and Colleges.
2. "Applicant" means:
  - a. An individual who submits a license application packet, or
  - b. A person who submits a request for approval of a continuing education course.
3. "Application packet" means the information, documents, and fees required by the Department to apply for a license.
4. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
5. "Client" means an individual who receives speech-language pathology services from a speech-language pathologist assistant.
6. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a licensee's professional competence in disciplines that directly relate to the licensee's scope of practice.
7. "Continuing education hour" means 50 to 60 minutes of continuous instruction.
8. "Course" means a workshop, seminar, lecture, conference, or class.
9. "Documentation" or "documented" means information in written, photographic, electronic, or other permanent form.
10. "General education" means instruction that includes:
  - a. Oral communication,
  - b. Written communication,

## ATTACHMENT A – CURRENT RULES

- c. Mathematics,
  - d. Computer instruction,
  - e. Social sciences, and
  - f. Natural sciences.
11. "Observation" means to witness:
- a. The provision of speech-language pathology services to a client, or
  - b. A demonstration of how to provide speech-language pathology services to a client.
12. "Semester credit hour" means one earned academic unit of study completed, at an accredited college or university, by:
- a. Attending a 50 to 60 minute class session each calendar week for at least 16 weeks, or
  - b. Completing practical work for a course as determined by the accredited college or university.
13. "Speech-language pathologist" means an individual who is licensed under A.R.S. § 36-1940.01.
14. "Speech-language pathology technical course work" means a curriculum that provides knowledge to develop core skills and assume job responsibilities, including:
- a. Language acquisition,
  - b. Speech development,
  - c. Communication disorders,
  - d. Articulation and phonology, and
  - e. Intervention techniques for speech and language disorders.
15. "Supervision" means instruction and monitoring provided by a licensed speech-language pathologist as required in A.R.S. §36-1940.04 to an individual training to become a speech-language pathologist assistant that includes:
- a. On-site observation and guidance; and
  - b. Activities, such as consultation, record review, and review and evaluation of an audiotaped or videotaped screening evaluation or clinical session.

### **R9-16-502. Application for an Initial License**

- A.** An applicant for a speech-language pathologist assistant initial license shall submit to the Department an application packet that includes:
- 1. An application in a format provided by the Department that contains:
    - a. The applicant's name, home address, telephone number, and e-mail address;

## ATTACHMENT A – CURRENT RULES

- b. The applicant’s Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
- c. If applicable, the name of the applicant's employer and the employer's business address and telephone number;
- d. Whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in this state or another state;
- e. If the applicant has been convicted of a felony or a misdemeanor involving moral turpitude:
  - i. The date of the conviction,
  - ii. The state or jurisdiction of the conviction,
  - iii. An explanation of the crime of which the applicant was convicted, and
  - iv. The disposition of the case;
- f. Whether the applicant has had a license revoked or suspended by any state within the previous two years;
- g. Whether the applicant is currently ineligible for licensure in any state because of a prior license revocation or suspension;
- h. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-505;
  - i. An attestation that the information submitted is true and accurate; and
  - j. The applicant’s signature and date of signature;
2. If applicable, a list of all states and countries in which the applicant is or has been licensed as an speech-language pathologist assistant;
3. If a license for an applicant has been revoked or suspended by any state within the previous two years, documentation that includes:
  - a. The date of the revocation or suspension,
  - b. The state or jurisdiction of the revocation or suspension, and
  - c. An explanation of the revocation or suspension;
4. If the applicant is currently ineligible for licensure in any state because of a prior license revocation or suspension, documentation that includes:
  - a. The date of the ineligibility for licensure,
  - b. The state or jurisdiction of the ineligibility for licensure, and
  - c. An explanation of the ineligibility for licensure;
5. A copy of the applicant’s:

## ATTACHMENT A – CURRENT RULES

- a. U.S. passport, current or expired;
  - b. Birth certificate;
  - c. Naturalization documents; or
  - d. Documentation of legal resident alien status;
6. An official transcript issued to the applicant from an accredited college or university, showing completion of at least 60 semester credit hours of general education and speech-language pathology technical course work, as required in A.R.S. § 36.1940.04(A);
  7. Documentation, signed by a licensed speech-language pathologist as required in A.R.S. §36-1940.04 who provided supervision to the applicant, confirming the applicant's completion of at least 100 hours of clinical interaction that did not include observation;
  8. A nonrefundable \$100 application fee; and
  9. A \$200 license fee.
- B.** The Department shall review the application packet for an initial license to practice as a speech-language pathologist assistant according to R9-16-505 and Table 5.1.
- C.** If the Department does not issue an initial license to an applicant, the Department shall refund the license fee to the applicant.

### **R9-16-503. License Renewal**

- A.** Before the expiration date of a speech-language pathologist assistant license, an applicant shall submit to the Department:
1. An application for renewal of a speech-language pathologist assistant license in a format provided by the Department that contains:
    - a. The applicant's name, home address, telephone number, and e-mail address;
    - b. If applicable, the name of the applicant's employer and the employer's business address and telephone number;
    - c. If applicable, the name of the applicant's supervising speech-language pathologist;
    - d. The applicant's license number and date of expiration;
    - e. Since the previous license application, whether the applicant has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
    - f. If the applicant has been convicted of a felony or a misdemeanor:
      - i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the applicant was convicted, and
      - iv. The disposition of the case;

## ATTACHMENT A – CURRENT RULES

- g. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-505;
    - h. An attestation that the information submitted is true and accurate; and
    - i. The applicant's signature and date of signature;
  2. Documentation of continuing education as required in R9-16-504 and completed within 24 months before the expiration date on the license, including:
    - a. The name of the individual or organization providing the course;
    - b. The date and location where the course was provided;
    - c. The title of each course attended;
    - d. A description of each course's content;
    - e. The name of the instructor;
    - f. The instructor's education, training, and experience background, if applicable; and
    - g. The number of continuing education hours earned for each course; and
  3. A \$200 license renewal fee.
- B.** According to A.R.S. § 36-1904, the Department shall allow a speech-language pathologist assistant to renew a license within 30 calendar days after the expiration date of the license by submitting to the Department:
  1. The renewal application packet required in subsection (A), and
  2. A \$25 late fee.
- C.** An individual who does not submit a renewal application packet required according to subsection (A) or (B) shall reapply for an initial license according to R9-16-502.

### **R9-16-504. Continuing Education**

- A.** According to A.R.S. § 36-1904, a licensee shall complete at least 20 continuing education hours.
- B.** Continuing education shall:
  1. Directly relate to the practice of speech-language pathology;
  2. Have educational objectives that exceed an introductory level of knowledge of speech-language pathology; and
  3. Consist of courses that include advances within the last five years in:
    - a. Practice of speech-language pathology,
    - b. Auditory rehabilitation,
    - c. Ethics, or
    - d. Federal and state statutes or rules.

## ATTACHMENT A – CURRENT RULES

- C.** A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (B):
1. Hearing Healthcare Providers of Arizona,
  2. Arizona Speech-Language-Hearing Association,
  3. American Speech-Language-Hearing Association,
  4. International Hearing Society,
  5. International Institute for Hearing Instrument Studies,
  6. American Auditory Society,
  7. American Academy of Audiology,
  8. Academy of Doctors of Audiology,
  9. Arizona Society of Otolaryngology-Head and Neck Surgery,
  10. American Academy of Otolaryngology-Head and Neck Surgery, or
  11. An organization determined by the Department to be consistent with an organization in subsection (C)(1) through (10).
- D.** An applicant may request approval for a continuing education course by submitting the following to the Department:
1. The applicant's name, address, telephone number, and e-mail address, as applicable;
  2. If a licensee, the licensee's license number;
  3. The title of the continuing education course;
  4. A brief description of the course;
  5. The name, educational background, and teaching experience of the individual presenting the course, if available;
  6. The educational objectives of the course; and
  7. The date, time, and place of presentation of the course, if applicable.
- E.** If an applicant submits the information in subsection (D), the Department shall review the request for approval for a continuing education course according to R9-16-505 and Table 5.1.
- F.** The Department shall approve a continuing education course if the Department determines that the continuing education course:
1. Is designed to provide current developments, skills, procedures, or treatment in diagnostic and therapeutic procedures in speech-language pathology;
  2. Is developed and presented by individuals knowledgeable and experienced in the presented subject area; and
  3. Contributes directly to the professional competence of a licensee.

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**G.** A speech-language pathologist assistant shall comply with the requirements in A.R.S. § 36-1904.

### **R9-16-505. Time-frames**

**A.** For each type of license or approval issued by the Department under this Article, Table 5.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).

1. A regular license is valid for two years.
2. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
3. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

**B.** For each type of license or approval issued by the Department under this Article, Table 5.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).

1. The administrative completeness review time-frame begins on the date the Department receives:
  - a. An application packet required in R9-10-502 and R9-10-503, or
  - b. A request for continuing education course approval according to R9-10-504.
2. Except as provided in subsection (B)(3), the Department shall provide a written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
  - a. If a license application packet or request for continuing education course approval is not complete, the notice of deficiencies shall list each deficiency and the documents or information needed to complete the license application packet or request for continuing education course approval.
  - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing documents or information.
  - c. If the applicant does not submit to the Department all the documents and information listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the license application packet or request for continuing education course approval withdrawn.
3. If the Department issues a license or approval during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

ATTACHMENT A – CURRENT RULES

- C.** For each type of license or approval issued by the Department under this Article, Table 5.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date of the notice of administrative completeness.
1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department issued or denied the license or continuing education course approval.
  2. During the substantive review time-frame:
    - a. The Department may make one comprehensive written request for additional information or documentation; and
    - b. If the Department and the applicant agree in writing to allow one or more supplemental requests for additional information or documentation, the Department may make the number of supplemental requests agreed to between the Department and the applicant.
  3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the documents and information requested.
  4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for information or documentation within 30 calendar days after the date of the request, the Department shall deny the license or approval.
- D.** An applicant who is denied a license may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

**Table 5.1. Time-frames (in calendar days)**

<b>Type of Approval</b>	<b>Statutory Authority</b>	<b>Overall Time-F rame</b>	<b>Administrative Completeness Review Time-Frame</b>	<b>Time to Respond to Notice of Deficiency</b>	<b>Substantive Review Time-Frame</b>	<b>Time to Respond to Comprehensive Written Request</b>
Initial License (R9-16-502)	A.R.S. §§ 36-1904 and 36-1904.04	60	30	30	30	30
Renewal License (R9-16-503)	A.R.S. § 36-1904	60	30	30	30	30
Continuing Education	A.R.S. § 36-1904	45	30	30	15	30

ATTACHMENT A – CURRENT RULES

(R9-16-504)						
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**R9-16-506      Disciplinary Actions**

- A. The Department may, as applicable:
  - 1. Deny, revoke, or suspend an speech-language pathologist assistant license under A.R.S. § 36-1934;
  - 2. Request an injunction under A.R.S. § 36-1937; or
  - 3. Assess a civil money penalty under A.R.S. § 36-1939.
- B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
  - 1. The type of violation,
  - 2. The severity of the violation,
  - 3. The danger to public health and safety,
  - 4. The number of violations,
  - 5. The number of clients affected by the violations,
  - 6. The degree of harm to a client,
  - 7. A pattern of noncompliance, and
  - 8. Any mitigating or aggravating circumstances.
- C. A licensee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

**R9-16-507.      Changes Affecting a License or a Licensee; Request for a Duplicate License**

- A. A licensee shall submit a notice to the Department in writing within 30 calendar days after the effective date of a change in:
  - 1. The licensee's home address or e-mail address, including the new home address or e-mail address;
  - 2. The licensee's name, including one of the following with the licensee's new name:
    - a. Marriage certificate,
    - b. Divorce decree, or
    - c. Other legal document establishing the licensee's new name; or
  - 3. The place or places, including address or addresses, where the licensee engages in the practice of speech-language pathology.

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- B.** A licensee may obtain a duplicate license by submitting to the Department a written request for a duplicate license in a format provided by the Department that contains:
1. The licensee's name and address,
  2. The licensee's license number and expiration date,
  3. The licensee's signature and date of signature, and
  4. A \$25 duplicate license fee.

## ATTACHMENT B - STATUTORY AUTHORITIES

### **36-104. Powers and duties**

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:
  - (a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.
  - (b) Public health support services, which shall include at a minimum:
    - (i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.
    - (ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.
    - (iii) Laboratory services programs.
    - (iv) Health education and training programs.
    - (v) Disposition of human bodies programs.
  - (c) Community health services, which shall include at a minimum:
    - (i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.
    - (ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.
    - (iii) Children with physical disabilities services programs.
    - (iv) Programs for the prevention and early detection of an intellectual disability.
  - (d) Program planning, which shall include at least the following:
    - (i) An organizational unit for comprehensive health planning programs.
    - (ii) Program coordination, evaluation and development.
    - (iii) Need determination programs.
    - (iv) Health information programs.
2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.
3. Make rules for the organization and proper and efficient operation of the department.
4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.
5. Provide a system of unified and coordinated health services and programs between this state and county governmental

## ATTACHMENT B - STATUTORY AUTHORITIES

health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.
10. Establish and maintain separate financial accounts as required by federal law or regulations.
11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
12. Take appropriate steps to reduce or contain costs in the field of health services.
13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.
14. Encourage an effective use of available federal resources in this state.
15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.
16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.
17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.
19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.
22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not

## ATTACHMENT B - STATUTORY AUTHORITIES

lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.
24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.
25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).
26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

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

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

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In

## ATTACHMENT B - STATUTORY AUTHORITIES

cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

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

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- (b) Comprehensive prenatal health care.
  - (c) Maternity, delivery and postpartum care.
  - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
  - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
- B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.
- C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

### **36-136. Powers and duties of director; compensation of personnel; rules; definitions**

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

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6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
  7. Prepare sanitary and public health rules.
  8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.
- D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
- E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:
1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.
  2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
- F. The compensation of all personnel shall be as determined pursuant to section 38-611.

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- G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
- H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
- I. The director, by rule, shall:
1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
  2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
  3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
  4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:
    - (a) Served at a noncommercial social event such as a potluck.
    - (b) Prepared at a cooking school that is conducted in an owner-occupied home.
    - (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
    - (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
    - (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
    - (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

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- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.
5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.
6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.
7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.
8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of

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

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.
10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.
11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.
12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.
13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.
14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".
- J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.
- K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or

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instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

- L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.
- N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.
- O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.
- P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.
- Q. For the purposes of this section:
  - 1. "Cottage food product":
    - (a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.
    - (b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.
  - 2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

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**Chapter 17**

**HEARING AID DISPENSERS,  
AUDIOLOGISTS AND  
SPEECH-LANGUAGE  
PATHOLOGISTS**

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### 36-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Accredited program" means a program leading to the award of a degree in audiology that is accredited by an organization recognized for that purpose by the United States department of education.
2. "Approved training program" means a postsecondary speech-language pathology assistant training program that is approved by the director.
3. "Assistive listening device or system" means an amplification system that is specifically designed to improve the signal-to-noise ratio for the listener who is hearing impaired, reduce interference from noise in the background and enhance hearing levels at a distance by picking up sound from as close to the source as possible and sending it directly to the ear of the listener, excluding hearing aids.
4. "Audiologist" means a person who engages in the practice of audiology and who meets the requirements prescribed in this chapter.
5. "Audiology" means the nonmedical and nonsurgical application of principles, methods and procedures of measurement, testing, evaluation and prediction that are related to hearing, its disorders and related communication impairments for the purpose of nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.
6. "Clinical interaction" means a fieldwork practicum in speech-language pathology that is supervised by a licensed speech-language pathologist.
7. "Department" means the department of health services.
8. "Direct supervision" means the on-site, in-view observation and guidance of a speech-language pathology assistant by a licensed speech-language pathologist while the speech-language pathology assistant performs an assigned clinical activity.
9. "Director" means the director of the department.
10. "Disorders of communication" means an organic or nonorganic condition that impedes the normal process of human communication and includes disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition and communications and oral, pharyngeal and laryngeal sensorimotor competencies.
11. "Disorders of hearing" means an organic or nonorganic condition, whether peripheral or central, that impedes the normal process of human communication and includes disorders of auditory sensitivity, acuity, function or processing.
12. "Hearing aid" means any wearable instrument or device designed for or represented as aiding or improving human hearing or as aiding, improving or compensating for defective human hearing, and any parts, attachments or accessories of the instrument or device, including ear molds, but excluding batteries and cords.
13. "Hearing aid dispenser" means any person who engages in the practice of fitting and dispensing hearing aids.
14. "Indirect supervision" means supervisory activities, other than direct supervision that are performed by a licensed speech-language pathologist and that may include consultation, record review and review and evaluation of audiotaped or videotaped sessions.
15. "Letter of concern" means an advisory letter to notify a licensee that, while there is insufficient evidence to support disciplinary action, the director believes the

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licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the director may result in action against the licensee.

16. "License" means a license issued by the director under this chapter and includes a temporary license.
17. "Nonmedical diagnosing" means the art or act of identifying a communication disorder from its signs and symptoms. Nonmedical diagnosing does not include diagnosing a medical disease.
18. "Practice of audiology" means:
  - (a) Rendering or offering to render to a person or persons who have or who are suspected of having disorders of hearing any service in audiology including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.
  - (b) Participating in hearing conservation, hearing aid and assistive listening device evaluation and hearing aid prescription preparation, fitting, dispensing and orientation.
  - (c) Screening, identifying, assessing, nonmedical diagnosing, preventing and rehabilitating peripheral and central auditory system dysfunctions.
  - (d) Providing and interpreting behavioral and physiological measurements of auditory and vestibular functions.
  - (e) Selecting, fitting and dispensing assistive listening and alerting devices and other systems and providing training in their use.
  - (f) Providing aural rehabilitation and related counseling services to hearing impaired persons and their families.
  - (g) Screening speech-language and other factors that affect communication function in order to conduct an audiologic evaluation and an initial identification of persons with other communications disorders and making the appropriate referral.
  - (h) Planning, directing, conducting or supervising services.
19. "Practice of fitting and dispensing hearing aids" means the measurement of human hearing by means of an audiometer or by any other means, solely for the purpose of making selections or adaptations of hearing aids, and the fitting, sale and servicing of hearing aids, including assistive listening devices and the making of impressions for ear molds and includes identification, instruction, consultation, rehabilitation and hearing conservation as these relate only to hearing aids and related devices and, at the request of a physician or another licensed health care professional, the making of audiograms for the professional's use in consultation with the hearing impaired. The practice of fitting and dispensing hearing aids does not include formal auditory training programs, lip reading and speech conservation.
20. "Practice of speech-language pathology" means:
  - (a) Rendering or offering to render to an individual or groups of individuals who have or are suspected of having disorders of communication service in speech language pathology including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.
  - (b) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of speech and language.
  - (c) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of oral-pharyngeal functions and related disorders.

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- (d) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating cognitive and communication disorders.
  - (e) Assessing, selecting and developing augmentative and alternative communication systems and providing training in the use of these systems and assistive listening devices.
  - (f) Providing aural rehabilitation and related counseling services to hearing impaired persons and their families.
  - (g) Enhancing speech-language proficiency and communication effectiveness.
  - (h) Screening hearing and other factors for speech-language evaluation and initially identifying persons with other communication disorders and making the appropriate referral.
21. "Regular license" means each type of license issued by the director, except a temporary license.
22. "Sell" or "sale" means a transfer of title or of the right to use by lease, bailment or any other contract, but does not include transfers at wholesale to distributors or dealers.
23. "Speech-language pathology" means the nonmedical and nonsurgical application of principles, methods and procedures of assessment, testing, evaluation and prediction related to speech and language and its disorders and related communication impairments for the nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.
24. "Speech-language pathology assistant" means a person who provides services prescribed in section 36-1940.04 and under the direction and supervision of a speech-language pathologist licensed pursuant to this chapter.
25. "Sponsor" means a person who is licensed pursuant to this chapter and who agrees to train or directly supervise a temporary licensee in the same field of practice.
26. "Temporary licensee" means a person who is licensed under this chapter for a specified period of time under the sponsorship of a person licensed pursuant to this chapter.
27. "Unprofessional conduct" means:
- (a) Obtaining any fee or making any sale by fraud or misrepresentation.
  - (b) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this chapter.
  - (c) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or other representation, however disseminated or published, that is misleading, deceiving, improbable or untruthful.
  - (d) Advertising for sale a particular model, type or kind of product when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type or kind if the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than that advertised.
  - (e) Representing that the professional services or advice of a physician will be used or made available in the selling, fitting, adjustment, maintenance or repair of hearing aids if this is not true, or using the words "doctor", "clinic", "clinical" or like words, abbreviations or symbols while failing to affix the word, term or initials

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"audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or

" Sc.D .<sup>11</sup>.

- (f) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts or questionable credit standing or by other false representations, or falsely disparaging the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies or services.
- (g) Displaying competitive products in the licensee's show window, shop or advertising in such manner as to falsely disparage such products.
- (h) Representing falsely that competitors are unreliable.
- (i) Quoting prices of competitive products without disclosing that they are not the current prices, or showing, demonstrating or representing competitive models as being current models when they are not current models.
- (j) Imitating or simulating the trademarks, trade names, brands or labels of competitors with the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers.
- (k) Using in the licensee's advertising the name, model name or trademark of a particular manufacturer of hearing aids in such a manner as to imply a relationship with the manufacturer that does not exist, or otherwise to mislead or deceive purchasers or prospective purchasers.
- (l) Using any trade name, corporate name, trademark or other trade designation that has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature or origin of any product of the industry, or of any material used in the product, or that is false, deceptive or misleading in any other material respect.
- (m) Obtaining information concerning the business of a competitor by bribery of an employee or agent of that competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means.
- (n) Giving directly or indirectly, offering to give, or permitting or causing to be given money or anything of value, except miscellaneous advertising items of nominal value, to any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence persons to refrain from dealing in the products of competitors.
- (o) Sharing any profits or sharing any percentage of a licensee's income with any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or to dissuade persons from dealing in products of competitors.
- (p) Failing to comply with existing federal regulations regarding the fitting and dispensing of a hearing aid.
- (q) Conviction of a felony or a misdemeanor that involves moral turpitude.
- (r) Fraudulently obtaining or attempting to obtain a license or a temporary license for the applicant, the licensee or another person.
- (s) Aiding or abetting unlicensed practice.
- (t) Wilfully making or filing a false audiology, speech-language pathology or hearing aid dispenser evaluation.

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- (u) The use of narcotics, alcohol or drugs to the extent that the performance of professional duties is impaired.
- (v) Betraying a professional confidence.
- (w) Any conduct, practice or condition that impairs the ability of the licensee to safely and competently engage in the practice of audiology, speech-language pathology or hearing aid dispensing.
- (x) Providing services or promoting the sale of devices, appliances or products to a person who cannot reasonably be expected to benefit from these services, devices, appliances or products.
- (y) Being disciplined by a licensing or disciplinary authority of any state, territory or district of this country for an act that is grounds for disciplinary action under this chapter.
- (z) Violating any provision of this chapter or failing to comply with rules adopted pursuant to this chapter.
- (aa) Failing to refer an individual for medical evaluation if a condition exists that is amenable to surgical or medical intervention prescribed by the advisory committee and consistent with federal regulations.
- (bb) Practicing **in** a field or area within that licensee's defined scope of practice **in** which the licensee has not either been tested, taken a course leading to a degree, received supervised training, taken a continuing education course or had adequate prior experience.
- (cc) Failing to affix the word, term or initials "audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or "Sc.D." in any sign, written communication or advertising media in which the term "doctor" or the abbreviation "Dr." is used in relation to the audiologist holding a doctoral degree.

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### 36-1902. Powers and duties of the director; advisory committee; examining committee

#### A. The director shall:

1. Appoint an advisory committee to collaborate with and assist the director and to perform duties as prescribed by this chapter. The director shall inform the advisory committee regarding all disciplinary actions.
2. Supervise and administer qualifying examinations to test the knowledge and proficiency of applicants for a hearing aid dispenser's license.
3. Designate the time and place for holding examinations for a hearing aid dispenser's license.
4. License persons who apply for and pass the examination for a license, and possess all other qualifications required for the practice of fitting and dispensing hearing aids, the practice of audiology and the practice of speech-language pathology.
5. License persons who apply for a license and possess all other qualifications required for licensure as a speech-language pathology assistant.
6. Authorize all disbursements necessary to carry out this chapter.
7. Ensure the public's health and safety by adopting and enforcing qualification standards for licensees and applicants for licensure under this chapter.

#### B. The director may:

1. Purchase and maintain, or rent, equipment and facilities necessary to carry out the examination of applicants for a license.
2. Issue and renew a license.
3. Deny, suspend, revoke or refuse renewal of a license or file a letter of concern, issue a decree of censure, prescribe probation, impose a civil penalty or restrict or limit the practice of a licensee pursuant to this chapter.
4. Appoint an examining committee to assist in the conduct of the examination of applicants for a hearing aid dispenser's license.
5. Make and publish rules that are not inconsistent with the laws of this state and that are necessary to carry out this chapter.
6. Require the periodic inspection of testing equipment and facilities of persons engaging in the practice of fitting and dispensing hearing aids, audiology and speech-language pathology.
7. Require a licensee to produce customer records of patients involved in complaints on file with the department.

C. The advisory committee appointed pursuant to subsection A, paragraph 1 consists of the director, two physicians licensed under title 32, chapter 13 or 17, one of whom is a specialist in otolaryngology, two licensed audiologists, one of whom dispenses hearing aids, two licensed speech-language pathologists, two public members, one of whom is hearing impaired, one member of the Arizona commission for the deaf and the hard of hearing who is not licensed pursuant to this chapter and two licensed hearing aid dispensers who are not licensed to practice audiology. Committee members who are licensed under this chapter shall have at least five years' experience immediately preceding the appointment in their field of practice in this state.

D. The examining committee authorized pursuant to subsection B, paragraph 4 consists of one otolaryngologist, two licensed dispensing audiologists and two licensed hearing aid dispensers. Committee members who are licensed under this

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chapter shall have at least five years' experience immediately preceding the appointment in their field of practice in this state. The findings of the examining committee shall be advisory to the director.

E. The director shall verify that the audiology licensee has passed a nationally recognized examination approved by the director.

F. The director shall verify that the speech-language pathology licensee has passed a nationally recognized examination approved by the director.

G. The director may recognize a nationally recognized speech-language hearing association or audiology association examination, or both, as an approved examination.

H. The advisory committee shall provide recommendations to the director in the following areas, on which the director shall act within a reasonable period of time:

1. Issuance and renewal of a license.
2. Prescribing disciplinary procedures.
3. Appointment of an examining committee to assist in the conduct of the examination of applicants for a hearing aid dispenser's license.
4. Adopting rules that are not inconsistent with the laws of this state and that are necessary to carry out this chapter.
5. Requiring the periodic inspection of testing equipment and facilities of persons engaging in the practice of fitting and dispensing hearing aids, audiology and speech-language pathology.
6. Requiring a licensee to produce customer records of patients involved in complaints on file with the department of health services.

### 36-1903. Deposit of monies

The director shall deposit pursuant to sections 35-146 and 35-147, ten per cent of all monies collected pursuant to this chapter in the state general fund and shall deposit the remaining ninety per cent in the health services licensing fund established by section 36-414, except that monies collected from civil penalties imposed pursuant to this chapter shall be deposited in the state general fund .

### 36-1904. Issuance of license; renewal of license; continuing education; military members

A. The director shall issue a regular license to each applicant who meets the requirements of this chapter. A regular license is valid for two years.

B. A licensee shall renew a regular license every two years on payment of the renewal fee prescribed in section 36-1908 . There is a thirty-day grace period after the expiration of a regular license. During this period the licensee may renew a regular license on payment of a late fee in addition to the-renewal fee.

C. When renewing a regular license as a hearing aid dispenser, the licensee shall provide proof of having completed at least twenty-four hours of continuing education within the prior twenty-four months. Courses sponsored by a single manufacturer of hearing aids may not satisfy more than eight hours of continuing

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education within the prior twenty-four months. At least eight hours of continuing education must be from courses taught in person that offer a hands-on opportunity for instruction in dispensing-related techniques. Courses on topics that provide a hearing aid dispenser an opportunity to stay current on business or client service practices or trends in the profession or that contribute to the professional or business competence of a hearing aid dispenser may qualify for up to one-third of the continuing education requirement.

D. When renewing a regular license in audiology or in speech-language pathology, the licensee shall provide proof of having completed at least twenty hours of continuing education within the prior twenty-four months. Courses sponsored by a single manufacturer of hearing aids may not satisfy more than eight hours of continuing education within the prior twenty-four months for persons with a license in audiology.

E. The director by rule shall provide standards for continuing education courses required by this section. Educational courses that are developed by professional organizations of hearing aid dispensers, audiologists or speech language pathologists and that are used by those associations to comply with continuing education requirements are deemed to comply with department standards.

F. The director may refuse to renew a regular license for any cause provided in section 36-1934.

G. A person who does not renew a regular license as prescribed by this section shall apply for a new license pursuant to the requirements of this chapter. If an application is received by the director within one year after the expiration date of the license, the applicant is not required to take an examination.

H. A person who reapplies for a regular license issued pursuant to this chapter must provide proof of completion of the continuing education hours prescribed by subsection C or D of this section within the previous twenty-four months before the date of reapplication.

I. A license issued pursuant to this chapter to any member of the Arizona national guard or the United States armed forces reserves does not expire while the member is serving on federal active duty and is extended one hundred eighty days after the member returns from federal active duty if the member, or the legal representative of the member, notifies the director of the federal active duty status of the member. A license issued pursuant to this chapter to any member serving in the regular component of the United States armed forces is extended one hundred eighty days after the date of expiration if the member, or the legal representative of the member, notifies the director of the federal active duty status of the member. If the license is renewed during the applicable extended time period after the member returns from federal active duty, the member is responsible only for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as late fees or delinquency fees. The member, or the legal representative of the member, shall present to the director a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

J. A license issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces does not expire and is extended one hundred eighty

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days after the date the military member is able to perform activities necessary under the license if the member both:

1. Is released from active duty service.
2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license.

### 36-1905. Sponsors; duties

- A. A sponsor shall directly train and supervise a temporary licensee. The director shall prescribe by rule a reasonable number of hours of training and supervision required. A sponsor may not sponsor more than two temporary licensees at one time.
- B. A sponsor and the temporary licensee are equally liable for violations of this chapter and rules adopted pursuant to this chapter that are committed by the temporary licensee.
- C. A sponsor who violates this section is subject to disciplinary action as prescribed pursuant to section 36-1934.

### 36-1906. Registering place of business with director

- A. A person who holds a license shall notify the director in writing of the address of the place or places where the person engages in the practice of fitting and dispensing hearing aids, audiology or speech-language pathology and any change of address.
- B. The director shall keep a record of the places of practice of persons who hold licenses. Any notice required to be given by the director to a person who holds a license may be given by mailing it to that person at the address given by that person to the director.

### 36-1907. Practicing without a license; prohibition

- A. A person shall not engage in the practice of fitting and dispensing hearing aids, audiology or speech-language pathology or display a sign or in any other way advertise or claim to be a hearing aid dispenser, an audiologist or a speech language pathologist unless the person holds an active license in good standing issued by the director as provided in this chapter.
- B. A person shall not engage in performing the duties of a speech-language pathology assistant or claim to be a speech-language pathology assistant unless the person holds an active license in good standing issued by the director as provided by this chapter.
- C. A licensee shall conspicuously post a license issued pursuant to this chapter in the licensee's office or place of business.

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### 36-1908. Fees

The director shall prescribe and collect fees from persons who are regulated under this chapter for the following:

1. An original application for a regular or temporary license.
2. An original issuance of a regular or temporary license.
3. An original application for a regular or temporary license if an examination pursuant to section 36-1924 is required.
4. A renewal of a regular or temporary license.
5. An issuance of a duplicate regular or temporary license.
6. A late fee.

### 36-1909. Bill of sale: requirements

A. A hearing aid dispenser or dispensing audiologist shall deliver a bill of sale to each person supplied with a hearing aid by the hearing aid dispenser or the dispensing audiologist or at that person's order or direction.

B. A bill of sale shall contain the hearing aid dispenser's or the dispensing audiologist's signature and shall show the address of that person's regular place of practice and the number of that person's license, a description of the make and model of the hearing aid and the amount charged. The bill of sale shall also state the serial number and the condition of the hearing aid as to whether it is new, used or rebuilt.

C. A bill of sale shall contain language that verifies that the client has been informed about audio switch technology, including benefits such as increased access to telephones and assistive listening devices. If the hearing device purchased by the client has audio switch technology, the client shall be informed of the proper use of the technology. The client shall be informed that an audio switch is also referred to as a telecoil, t-coil or t-switch.

D. A bill of sale shall contain language that informs the client about the Arizona telecommunications equipment distribution program established by section 36-1947 that provides assistive telecommunications devices to residents of this state who have hearing loss.

### 36-1910. Application of chapter to corporations and other organizations: exemptions

A. Except as provided in subsection B of this section and to the extent practicable, this chapter applies to corporations, partnerships, trusts, associations or like organizations.

B. Corporations, partnerships, trusts, associations or like organizations that are fitting and dispensing hearing aids are exempt from the qualification and examination requirements of sections 36-1923 and 36-1924, provided they pay the license fee prescribed in section 36-1908 and employ only licensed persons in the over-the-counter or other in-person fitting and dispensing of hearing aids.

## ATTACHMENT B - STATUTORY AUTHORITIES

36-1921. Persons not affected by chapter This chapter does not:

1. Apply to a person while engaged in the practice of recommending hearing aids if such practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public or charitable institution, or a nonprofit organization which is primarily supported by voluntary contributions unless they sell hearing aids.
2. Apply to any person engaging in the practice of measuring human hearing for the purpose of selection of hearing aids provided that the person or the organization that employs that person does not sell hearing aids or hearing aid accessories.
3. Prevent a health care professional who is licensed or certified under title 32 from acting within the scope of that person's license or certificate.
4. Apply to a person who is credentialed by this state as a teacher of the deaf from acting within the scope of those credentials.
5. Apply to a student, intern or trainee pursuing a course of study in audiology or speech-language pathology in a nationally or regionally accredited institution of higher education or training institution if all of the following are true:
  - (a) The activities are part of a planned course of study at that institution.
  - (b) The person is designated by a title that clearly indicates the status appropriate to the person's level of education.
  - (c) The person works under the supervision of a person who is licensed in this state as an audiologist or a speech-language pathologist.
  - (d) Before a person receives services from a student or a temporary licensee, the supervising licensee provides written notification of this fact to the patient.
6. Apply to any person certified by the department of health services for the school hearing screening program.

36-1922. Reciprocity

- A. The director may issue a license to a person who is currently licensed in another state or jurisdiction that the director determines meets the minimum licensure requirements of this chapter. The person shall apply for licensure and pay all applicable fees as prescribed by this chapter and shall pass an examination approved by the director in jurisprudence and ethics related to this chapter within six months after initial licensure. The director shall offer the examination at least four times each calendar year.
- B. The applicant shall provide information the director determines is necessary to investigate the status of the applicant's current license.

36-1923. Hearing aid dispensers; licensure; requirements

- A. An applicant for a hearing aid dispenser license shall pay to the director a nonrefundable application fee and shall show to the satisfaction of the director that the applicant:
  1. Is a person of good moral character.

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2. Has an education equivalent to a four-year course in an accredited high school or has continuously engaged in the practice of fitting and dispensing hearing aids during the three years preceding August 11, 1970.

3. Has not had the applicant's license revoked or suspended by a state within the past two years and is presently not ineligible for licensure in any state due to prior revocation or suspension.

B. An applicant for a hearing aid dispenser license who is notified by the director that the applicant has fulfilled the requirements of subsection A of this section shall appear to be examined by written and practical tests as designated by the director in order to demonstrate that the applicant is qualified to practice the fitting and dispensing of hearing aids.

C. The director shall give at least two and not exceeding four examinations of the type described in this section in each calendar year unless there is an insufficient number of applicants for the second annual examination.

### 36-1924. Examination for license

A. The examination provided for in this article shall consist of:

1. A demonstration of minimal knowledge in the techniques of testing hearing and fitting and evaluating hearing aids.

2. A knowledge of the medical and rehabilitation facilities, for children and adults with hearing disorders, in this state.

3. Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:

(a) Physics.

(b) The human hearing mechanism, including its functions and causes of its disorders.

(c) The function of hearing aids.

4. Practical tests of proficiency in the techniques of taking ear mold impressions and measurement of hearing by pure tone audiometry, including the air, bone and masking methods, and speech audiometry and other skills as they pertain to the candidacy for, selection of and adaptation of hearing aids.

5. A knowledge of rehabilitation and hearing conservation techniques as they relate only to hearing aids and related devices.

B. The examination shall not be constructed to require knowledge or abilities inconsistent with the realistic services of a hearing aid dispenser or with the requirements of sound public health practices.

C. To provide adequate tests of proficiency, the examination requirements provided in this section may be changed when deemed necessary due to technological advances.

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### 36-1926. Temporary license; sponsorship; termination of sponsorship

- A. An applicant who fulfills the requirements of section 36-1923, subsection A may apply to the director for a temporary license.
- B. On receiving an application as provided by subsection A of this section, accompanied by an application fee and proof of sponsorship, the director shall issue a temporary license. A temporary license allows the licensee to practice the fitting and dispensing of hearing aids for a twelve-month period.
- C. An applicant shall provide proof to the satisfaction of the director that the applicant is or will be supervised and trained for fitting and dispensing activities by a sponsor licensed pursuant to this chapter.
- D. A sponsor may terminate sponsorship at any time and for any reason. The director shall not review the reasons for the termination. A temporary license terminates on the date that the director receives notice from the sponsor that the sponsor is terminating sponsorship. This notice shall be accompanied by documentation that the sponsor has notified the licensee of the termination. The director shall prescribe by rule how the sponsor shall document this notification of termination. A person whose license is terminated shall apply for a new temporary license as prescribed by this section and shall not practice until granted a license.
- E. A temporary licensee shall take an examination within six months after issuance of a temporary license. If the person takes and fails the examination, the person may renew the temporary license once before the temporary license expires. The person shall take the next examination following the issuance of the renewal license.
- F. The director may revoke or suspend a temporary license in the same manner and for the same reasons as prescribed pursuant to section 36-1934.
- G. The director may deny an application for a temporary license if the applicant has previously held a temporary license and renewed the temporary license.

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### 36-1934. Denial, revocation or suspension of license; hearings; alternative sanctions

A. The director may deny, revoke or suspend a license issued under this chapter for any of the following reasons:

1. Conviction of a felony or misdemeanor involving moral turpitude. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or from the judge of that court is sufficient evidence of conviction.
2. Securing a license under this chapter through fraud or deceit.
3. Unprofessional conduct, or incompetence in the conduct of his practice.
4. Using a false name or alias in the practice of his profession.
5. Violating any of the provisions of this chapter.
6. Failing to comply with existing federal regulations regarding the fitting and dispensing of a hearing aid.

B. If the director determines pursuant to a hearing that grounds exist to revoke or suspend a license, the director may do so permanently or for a fixed period of time and may impose conditions as prescribed by rule.

C. The department may deny a license without holding a hearing. After receiving notification of the denial, the applicant may request a hearing to review the denial.

D. The department shall conduct any hearing to revoke or suspend a license or impose a civil penalty under section 36-1939 pursuant to title 41, chapter 6, article 10.

E. Instead of denying, revoking or suspending a license the director may file a letter of concern, issue a decree of censure, prescribe a period of probation or restrict or limit the practice of a licensee.

F. The director shall promptly notify a licensee's employer if the director initiates a disciplinary action against the licensee.

### 36-1936. Unlawful acts

A person may not:

1. Sell, barter, or offer to sell or barter, a license.
2. Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to engage in the practice of fitting and dispensing hearing aids.
3. Alter materially a license with fraudulent intent.
4. Use or attempt to use as a valid license one which has been purchased, fraudulently obtained, counterfeited or materially altered.
5. Wilfully make a false, material statement in an application or related document for a license or for renewal of a license.

### 36-1937. Injunctive relief

The director may enforce any provision of this chapter by injunction or by any other appropriate proceeding. No such proceeding shall be barred by any proceeding had or pending pursuant to any other provisions of this chapter, or by the imposition of any fine or term of imprisonment pursuant thereto.

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### 36-1938. Violation; classification

Violation of any provision of this chapter is a class 3 misdemeanor.

### 36-1939. Civil penalties; enforcement

A. The director may impose a civil penalty of not more than five hundred dollars for a violation of this chapter or a rule adopted pursuant to this chapter.

B. The attorney general and the county attorney may bring an action in the name of this state to enforce civil penalties imposed pursuant to this section. Actions shall be brought in the superior court in the county where the violation occurs.

C. The director may impose penalties assessed pursuant to this section in addition to other penalties imposed pursuant to this chapter.

D. All monies collected from civil penalties collected for violation of this chapter or a rule adopted pursuant to this chapter shall be deposited in the state general fund.

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### 36-1940. Audiology; licensure requirements

A. A person who wishes to be licensed as an audiologist shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.
2. Submit evidence satisfactory to the director that the applicant has:
  - (a) A doctoral degree with an emphasis in audiology from a nationally or regionally accredited college or university in an accredited program consistent with the standards of this state's universities.
  - (b) Completed supervised clinical rotations in audiology from a nationally or regionally accredited college or university in an accredited program consistent with the standards of this state's universities.
3. Pass an examination pursuant to section 36-1902, subsection G. The applicant must have completed the examination within three years before the date of application for licensure pursuant to this article.
4. Be of good moral character.
5. Not have had a license revoked or suspended by a state within the past two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.

B. A person who has a doctoral degree in audiology and who wishes to be licensed as an audiologist to fit and dispense hearing aids shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.
2. Submit evidence satisfactory to the director that the applicant has:
  - (a) A doctoral degree with an emphasis in audiology from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.
  - (b) Completed supervised clinical rotations in audiology from a nationally or regionally accredited college or a university in an accredited program that is consistent with the standards of this state's universities.
3. Pass an examination pursuant to section 36-1902, subsection G. The applicant must have completed the examination within three years before the date of application for licensure pursuant to this article.
4. Pass an examination approved by the director in jurisprudence and ethics related to this chapter within six months after initial licensure. The director shall offer the examination at least four times each calendar year.
5. Be of good moral character.
6. Not have had a license revoked or suspended by a state within the past two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.

C. A person who wishes to be licensed as an audiologist to fit and dispense hearing aids and who was awarded a master's degree in audiology before December 31, 2007 must:

1. Submit a nonrefundable application fee as prescribed pursuant to section 36-1908.
2. Submit evidence satisfactory to the director that the applicant meets the requirements prescribed in section 36-1940.02, subsection C for a waiver of the educational and clinical rotation requirements of this article.
3. Pass an audiology examination pursuant to section 36-1902, subsection E. The applicant must have completed the examination within three years before the date of

## ATTACHMENT B - STATUTORY AUTHORITIES

application for licensure pursuant to this article unless the applicant is currently

## ATTACHMENT B - STATUTORY AUTHORITIES

practicing audiology and meets the audiology examination waiver requirements of section 36-1940.02, subsection D.

4. Pass the hearing aid dispenser's examination pursuant to section 36-1924.
  5. Be of good moral character.
  6. Not have had a license to practice as an audiologist or hearing aid dispenser revoked or suspended by another state within the past two years and not currently be ineligible for licensure in any state because of a prior revocation or suspension.
- D. The director shall adopt rules prescribing criteria for approved postgraduate professional experience.

### 36-1940.01. Speech-language pathologist: licensure requirements

- A. A person who wishes to be licensed as a speech-language pathologist shall:
1. Submit a nonrefundable application fee as prescribed by section 36-1908.
  2. Submit evidence satisfactory to the director that the applicant has:
    - (a) A master's degree in speech-language pathology or the equivalent from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.
    - (b) Completed a supervised clinical practicum in speech-language pathology from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.
    - (c) Completed postgraduate professional experience in the field of speech-language pathology approved by the director.
  3. Pass an examination pursuant to section 36-1902, subsection G.
  4. Be of good moral character.
  5. Not have had a license revoked or suspended by a state within the past two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.
- B. A person who wishes to be licensed as a speech-language pathologist whose practice is limited to providing services to pupils under the authority of a local education agency or state supported institution shall:
1. Submit a nonrefundable application fee as provided by section 36-1908.
  2. Submit proof of an employee or contractor relationship with a local education agency or a state supported institution.
  3. Hold a certificate in speech and language therapy awarded by the state board of education.
- C. The director shall adopt rules prescribing criteria for approved postgraduate professional experience.

### 36-1940.02. Waiver of licensure and examination requirements

- A. The advisory committee appointed under section 36-1902 may recommend to the director a waiver of the educational requirements of sections 36-1940 and 36-1940.01 if an applicant submits proof satisfactory to the department that the applicant received professional education in another country equivalent to the education and practicum

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requirements of this article.

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B. The department shall waive the examination requirements of section 36-1940.01 under either of the following conditions:

1. The applicant presents proof satisfactory to the department that the applicant is currently licensed in a state, district or territory of this country that has standards that are at least equivalent to those of this state.
2. The applicant holds a certificate of clinical competence in speech-language pathology from a nationally recognized speech-language hearing association approved by the department in the field for which the applicant is applying for licensure.

C. The department shall waive the education and clinical rotation requirements of section 36-1940 if an applicant submits proof satisfactory to the director that the applicant either:

1. Is currently licensed in a state that has standards that are at least equivalent to those of this state.
2. Has a master's degree in audiology that was awarded by an accredited program before December 31, 2007 and has completed postgraduate professional experience in audiology as approved by the director.

D. The department shall waive the audiology examination requirements of section 36-1940 if either:

1. The applicant presents proof satisfactory to the department that the applicant is currently licensed and practicing audiology in this state or in another state that has standards that are at least equivalent to those of this state.
2. The applicant presents proof satisfactory to the department that the applicant is currently practicing audiology under the authority and supervision of an agency of the United States government or of another board, agency or department of another state and holds a certificate in audiology from a recognized credentialing body approved by the director.

E. The department shall waive the hearing aid dispensing examination requirements of section 36-1940 if:

1. The applicant presents proof satisfactory to the department that the applicant holds a current license that includes dispensing and that is issued by another state that has standards that are at least equivalent to those of this state.
2. The applicant passes an examination approved by the director in jurisprudence and ethics related to this chapter within six months after initial licensure. The director shall offer the examination at least four times each calendar year.

### 36-1940.03. Temporary licenses

A. The department shall issue a temporary license to a person who does not meet the professional experience requirement of section 36-1940.01 if the applicant meets the other requirements of that section and:

1. Includes with the application a plan for meeting the postgraduate professional experience.
2. Submits a fee prescribed by section 36-1908.

B. A person may renew a temporary license only once.

C. A person issued a temporary license shall practice only under the supervision of a person who is fully licensed by this state.

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### 36-1940.04. Speech-language pathologist assistant: licensure requirements: scope of practice; supervision

A. A person who wishes to be licensed as a speech-language pathologist assistant shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.
2. Submit written evidence satisfactory to the director that the applicant has completed:
  - (a) An approved training program for speech-language pathology assistants or the equivalent from a nationally or regionally accredited college or university that consisted of a minimum of sixty semester credit hours of course work with the following curriculum content:
    - (i) Twenty to forty semester credit hours of general education.
    - (ii) Twenty to forty semester credit hours of speech-language pathology technical course work.
  - (b) A minimum of one hundred hours of clinical interaction that does not include observation, under the supervision of a licensed master's level speech-language pathologist.
3. Be of good moral character.
4. Not have had a license revoked or suspended by a state within the past two years and is not presently ineligible for licensure in any state because of a prior revocation or suspension.

B. The director shall grant a waiver of the requirements for licensure as provided by subsection A of this section until September 1, 2007 to individuals who have performed the functions of a speech-language pathology assistant if the individual:

1. Has completed a minimum of forty semester credit hours of speech-language pathology technical course work.
2. Has satisfactorily completed a minimum of two years of experience as a speech language pathology assistant under the supervision of a licensed master's level speech-language pathologist.
3. Is of good moral character.
4. Has not had a license revoked or suspended by a state within the past two years and is not presently ineligible for licensure in any state because of a prior revocation or suspension.

C. A speech-language pathology assistant may do the following under the supervision of the licensed speech-language pathologist:

1. Conduct speech and language screenings without interpretation, using screening protocols specified by the supervising speech-language pathologist.
2. Provide direct treatment assistance, including feeding for nutritional purposes to patients, clients or students except for patients, clients or students with dysphagia, identified by the supervising speech-language pathologist by following written treatment plans, individualized education programs, individual support plans or protocols developed by the supervising speech-language pathologist.
3. Document patient, client or student progress toward meeting established objectives as stated in the treatment plan, individual support plan or individualized education program without interpretation of the findings, and report this information to the supervising speech-language pathologist.
4. Assist the speech-language pathologist in the collecting and tallying of data for assessment purposes, without interpretation of the data.

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5. Act as a second-language interpreter during assessments.
6. Assist with informal documentation during an intervention session by collecting and tallying data as directed by the speech-language pathologist, preparing materials and assisting with other clerical duties as specified by the supervising speech-language pathologist.
7. Schedule activities and prepare charts, records, graphs or other displays of data.
8. Perform checks and maintenance of equipment.
9. Participate with the speech-language pathologist in research projects, in-service training and public relations programs.
10. Sign and initial treatment notes for review and co-signature by the supervising speech-language pathologist.

D. A speech-language pathology assistant shall not:

1. Conduct swallowing screening, assessment and intervention protocols, including modified barium swallow studies.
2. Administer standardized or nonstandardized diagnostic tests, formal or informal evaluations or interpret test results.
3. Participate in parent conferences, case conferences or any interdisciplinary team meeting without the presence of the supervising speech-language pathologist, except for individualized education program or individual support plan meetings if the licensed speech pathologist has been excused by the individualized education program team or the individual support plan team.
4. Write, develop or modify a patient's, client's or student's treatment plan, individual support plan or individualized education program in any way.
5. Provide intervention for patients, clients or students without following the treatment plan, individual support plan or individualized education program prepared by the supervising speech-language pathologist.
6. Sign any formal documents, including treatment plans, individual support plans, individualized education programs, reimbursement forms or reports.
7. Select patients, clients or students for services.
8. Discharge patients, clients or students from services.
9. Unless required by law, disclose clinical or confidential information orally or in writing to anyone not designated by the speech-language pathologist.
10. Make a referral for any additional service.
11. Communicate with the patient, client or student or with family or others regarding any aspect of the patient, client or student status without the specific consent of the supervising speech-language pathologist.
12. Claim to be a speech-language pathologist.
13. Write a formal screening, diagnostic, progress or discharge note.
14. Perform any task without the express knowledge and approval of the supervising speech-language pathologist.

E. All services provided by a speech-language pathology assistant shall be performed under the direction and supervision of a speech-language pathologist licensed pursuant to this chapter.

F. A licensed speech-language pathologist who supervises or directs the services provided by a speech-language pathology assistant shall:

1. Have at least two years of full-time professional experience as a licensed speech language pathologist.

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2. Provide direction and supervision to not more than two full-time or three part time speech-language pathology assistants at one time.
  3. Ensure that the amount and type of supervision and direction provided to a speech-language pathology assistant is consistent with the individual's skills and experience, the needs of the patient, client or student served, the setting in which services are provided and the tasks assigned and provide:
    - (a) A minimum of twenty per cent direct supervision and ten per cent indirect supervision of all of the time that a speech-language pathology assistant is providing services during the first ninety days of the person's employment.
    - (b) Subsequent to the first ninety days of a speech-language pathology assistant's employment, a minimum of ten per cent direct supervision and ten per cent indirect supervision of all of the time a speech-language pathologist assistant is providing service.
  4. Inform a patient, client or student when the services of a speech-language pathology assistant are being provided.
  5. Document all periods of direct and indirect supervision provided to a speech language pathology assistant.
- G. If more than one speech-language pathologist provides supervision to a speech language pathology assistant, one of the speech-language pathologists shall be designated as the primary supervisor who is responsible for coordinating any supervision provided by other speech-language pathologists.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 16, Article 2, Licensing Audiologists and Speech-Language Pathologists



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 30, 2019

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (F19-0707)**  
Title 9, Chapter 16, Article 2, Licensing Audiologists and Speech-Language Pathologists

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This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to the rules in Title 9, Chapter 16, Article 2 regarding the licensing of audiologists and speech-language pathologists.

The previous 5YRR for these rules was due on December 31, 2014. On July 30, 2014, the Department requested the Council to reschedule this report. The Department requested rescheduling because it was substantially revising these rules in response to Laws 2013, Ch. 33. This statute required the Department to extend licensure from one year to two years, make conforming changes to renewal and continuing education requirements, and reduce the regulatory burden on audiologists and speech language pathologists. On September 12, 2014, the Council granted the rescheduling request, and the due date of the report for these rules was changed to May 31, 2019.

### **Proposed Action**

For the reasons indicated in the report, the Department proposes to amend the rules in Article 2 through an expedited rulemaking. The Department plans to submit a Notice of Final Expedited Rulemaking to the Council by December 31, 2019.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department substantially revised Article 2 through the exempt rulemaking process in 2014, so there is no prior economic, small business, and consumer impact statement (EIS) available. The Article 2 rules establish a framework for the licensure of audiologists and speech-language pathologists in Arizona. In March 2019, the Department's licensees included 373 audiologists, 172 audiologists who also dispense hearing aids, and 3,397 speech-language pathologists.

The stakeholders include the Department, audiologists, speech-language pathologists, businesses that employ these professionals, and the general public.

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

The Department indicates that the rules provide the least intrusive and least costly method of achieving their regulatory objectives. The Department states that the benefits of having effective and understandable rules outweigh the costs. The Department identifies several non-substantive issues with the rules in this 5YRR. The Department plans to submit an expedited rulemaking to the Council by December 31, 2019 to address these issues.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the following rules should be amended to improve their clarity, conciseness, and understandability:

- R9-16-201 (Definitions);
- R9-16-202 (Application for an Initial License for an Audiologist);
- R9-16-203 (Application for an Initial License for a Speech-language Pathologist);
- R9-16-204 (Application for a Temporary License for a Speech-language Pathologist);
- R9-16-205 (License Renewal for an Audiologist);
- R9-16-206 (License Renewal for a Speech-language Pathologist);

- R9-16-207 (License Renewal for a Temporary Speech-language Pathologist);
- R9-16-208 (Continuing Education);
- R9-16-209 (Time-frames);
- R9-16-210 (Clinical Fellowship Supervisors);
- R9-16-212 (Equipment; Records); and
- R9-16-215 (Changes Affecting a License or a Licensee; Request for a Duplicate License).

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

Yes. The Department indicates that the rules are enforced as written.

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

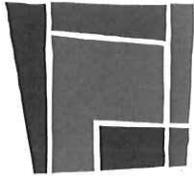
Not applicable. There is no corresponding federal law.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department states that a general permit is not applicable. Under A.R.S. § 36-1902(A), the Department is authorized to license persons who apply for a license and possess all other qualifications required for licensure as an audiologist or a speech-language pathologist.

**9. Conclusion**

As indicated in the report, some of the rules in Article 2 can be amended to improve their clarity, conciseness, and effectiveness. The Department is proposing to make these amendments through an expedited rulemaking by December 31, 2019. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

April 24, 2019

Connie Wilhelm, Vice-Chair  
Arizona Department of Administration  
100 N. 15<sup>th</sup> Avenue, Suite 305  
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 16, Article 2 Licensing Audiologist and Speech-Language Pathologists

Dear Ms. Wilhelm:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 16, Article 2 is due to the Council no later than May 31, 2019. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 16, Article 2 and is enclosing a report to the Council for this rule.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. The report contains a summary of the Department's review for all the rules and is in the format of the Council's report template. Included in the package are the rules reviewed and the general and specific authorities. As described in the report, the Department plans to amend the rules in 9 A.A.C. 16, Article 2 to address the matters identified in this report and submit a Notice of Final Expedited Rulemaking to Governor's Regulatory Review Council by December 31, 2019.

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

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a white rectangular area.

Robert Lane  
Director's Designee

RL:tk  
Enclosures

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

**Arizona Department of Health Services**

**Five-Year-Review Report**

**Title 9. Health Services**

**Chapter 16. Department of Health Services – Occupational Licensing**

**Article 2. Licensing Audiologists and Speech-Language Pathologists**

**May 2019**

**1. Authorization of the rule by existing statutes**

Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A)(18), and 36-136(G)

Implementing statutes: A.R.S. §§ 36-1901 through 36-1910, 36-1934, and 36-1936 through 36-1940.03

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R9-16-201	The objective of the rule is to define the terms used in Article 2 so requirements are clear and terms are interpreted consistently.
R9-16-202	The objective of the rule is to specify the requirements for submitting an initial application packet for licensure as an audiologist.
R9-16-203	The objective of the rule is to specify the requirements for submitting an initial application packet for licensure as a speech-language pathologist.
R9-16-204	The objective of the rule is to specify the requirements for submitting an initial application packet for licensure as a temporary speech-language pathologist.
R9-16-205	The objective of the rule is to specify the requirements for submitting a renewal application packet for licensure as an audiologist.
R9-16-206	The objective of the rule is to specify the requirements for submitting a renewal application packet for licensure as a speech-language pathologist.
R9-16-207	The objective of the rule is to specify the requirements for submitting a renewal application packet for licensure as a temporary speech-language pathologist.
R9-16-208	The objective of the rule is to specify continuing education requirements.
R9-16-209	The objective of the rule is to specify the process for Department approvals of initial and temporary applications, renewal applications, and continuing education.
Table 2.1	The objective of the table is to specify time-frame durations for the Department’s approval of applications and continuing education.
R9-16-210	The objective of the rule is to specify the requirements for clinical fellowship supervisors.
R9-16-211	The objective of the rule is to specify the requirements for licensed speech-language pathologists who supervise speech-language pathologist assistants.
R9-16-212	The objective of the rule is to provide requirements for maintaining hearing screening equipment and client records.

R9-16-213	The objective of the rule is to require an audiologist who dispenses hearing aids to provide a hearing aid bill of sale when requested by a client.
R9-16-214	The objective of the rule is to specify the types of disciplinary actions and the criteria to consider when determining a disciplinary action the Department may take.
R9-16-215	The objective of the rule is to provide a licensee with a method for notifying the Department of a change that affects a license and for requesting a duplicate license.

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

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

Rule	Explanation
R9-16-201 through R9-16-210, R9-16-212, and R9-16-215	The rules are effective; however as identified in paragraph 6 of this report, the rules could be improved to increase understandability of the rules by simplifying and clarifying some requirements, updating antiquated language and outdated citations and references, and making technical and grammatical changes.

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

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation

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

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement.*

*In addition, include the agency's proposal for resolving the issue.*

Rule	Explanation

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

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation
R9-16-201	The rule is understandable, however, the rule would be clearer if the Department changed or deleted outdated and antiquated definitions, terms, and citations. For example, in definition (1) some regional accrediting organizations' titles in (1)(a), (c), (e), and (f) have changed; the word "current" in definition (15) is not necessary; the term "Department

	designated written hearing aid dispenser examination” is not used in the rules; and definition (22) would be clearer if reference to A.R.S. §§ 15-301 through 15-396 were clarified since not all of A.R.S. Title 15, Chapter 3 is applicable to a “local education agency.” Other definitions requiring changes includes (3), (4), (11), (16), (23), (27), (30), (31), and (33).
R9-16-202 R9-16-203 R9-16-204	The rules is understandable and would be clearer if antiquated term in subsection (A)(1) “format provided by the Department” were changed to “a Department-provided format.” In subsection (A)(1), a reference to “R9-16-209” could be clearer if the reference included subsection (C), for example, R9-16-209(C). Another reference in subsection (A)(4) to “disciplinary action under Title 37, Chapter 17” should be changed since incorrect. In addition, the rules would be clearer and less burdensome if: in subsection (A)(6), the language were simplified to require documentation of citizenship or alien status that complies with the statutes; and in subsection (A)(7), the word “official” were deleted and other types of documentation were added. In R9-16-202 and R9-16-203, subsections (A)(7) and (A)(8) could be combined to simplify required documentation submitted by an applicant. In addition, subsection (B)(3), (4) and (5) in R9-16-202 also contain documentation requirements that could be simplified. The Department plans to streamline these requirements since a certificate of clinical competence issued by the American Speech-Language-Hearing Association (ASHA) attest that an individual successfully completed or passed required education, national examination, and clinical fellowship making it redundant for the Department to require related documentation. A requirement for an employee agreement or employment contract could be simplified and less burdensome if subsections (B)(2)(a) through (e) in R9-16-203 were removed. In R9-16-202(A)(7)(b) and R9-16-203(A)(8)(b), the requirements for waiver approval would be clearer if the types of documentation were listed rather than a reference to statutes. The Department believes these changes will reduce burden for applicants and increase opportunity for reciprocity.
R9-16-205	The rule is understandable and would be clearer if the antiquated language “format provided by the Department” were changed to “a Department-provided format;” and the rule would be clearer if the continuing education requirement were simplified in subsection (A)(2) and a statement of completion of continuing education were added to applicant’s attestation. Also, attestation should include applicant’s agreement to allow the Department to make supplemental requests for additional information to ensure the Department may approve licensure.
R9-16-206	The rule is understandable and would be clearer if the antiquated language “format provided by the Department” were changed to “a Department-provided format;” and the rule would be clearer if the continuing education requirement were simplified in (A)(2) and a statement of completion of continuing education were added to applicant’s attestation. Also, in subsection (A)(3), updating reference ‘R9-16-203(B)’ to ‘R9-16-203(B)(2) and (3)’ would improve conciseness of the rule.

R9-16-207	The rule is understandable and would be clearer if the antiquated language “format provided by the Department” were changed to “a Department-provided format.”
R9-16-208	The rule is understandable; however, the rule would be clearer if the Department clarified in subsection (A) that a licensee has two years to complete required continuing education before renewing a license. The rules would also be clearer if titles for organizations listed in subsection (C)(5) and (9) were updated. Additionally, the Department has determined that the rule would be clearer if subsections (D), (E), and (F) were deleted, since the organizations listed in subsection (C) provide adequate continuing education courses to meet licensees’ needs.
R9-16-209	<p>The rule is understandable, however, would be clearer if the time-frame requirements were simplified and consistent with other rules. For example, the rule should clarify that “The overall time-frame begins, for an initial license approval, on the date the Department receives an application packet.” Clarifying when an overall time-frame begins should be provided for each type of approval listed in the time-frame table. Also, in subsection (D), the requirement for an applicant to “send [a] the required license fee to the Department” should specify the fee amount, as was specified in previous Article 2 rules. In the 1999 Notice of Final Rulemaking<sup>1</sup>, the requirement in new R9-16-204(D) specified the fee amount as a “\$50 license fee to the Department.” In the 2004 Notice of Final Rulemaking<sup>2</sup>, the requirement in amended R9-16-204(D) also specified the fee amount as a “\$50 \$100 license fee to the Department.” However, in the 2014 Notice of Exempt Rulemaking<sup>3</sup>, the requirement in subsection (D) was amended to: “<del>a \$100</del> <u>the required</u> license fee to the Department.” The removal of the license fee amount was an oversight and is inconsistent with: the Department’s intent to charge a licensure fee; the Department’s current practice for requiring a licensure fee; and other licensure fee requirements in Article 2. <i>See</i> A.A.C. R9-16-205(A)(3), R9-16-206(A)(4), R9-16-207(A)(3), and R9-16 -215(B)(4). The requirement should have been amended as:</p> <p><b>D.</b> After receiving the written notice of approval in subsection (C)(1), <del>an applicant for a regular license or a temporary license shall send the required license fee to the</del></p>

<sup>1</sup> 1999 [Notice of Final Rulemaking](#) cites A.R.S. §§ 36-1908 through 36-1940.03 as authority to prescribe standards for licensure of audiology and speech-language pathology; new Article 2 rules required applicants to pay a “\$50 license fee” in R9-16-204 and a “license renewal fee of \$50” in R9-16-206.

<sup>2</sup> 2004 [Notice of Final Rulemaking](#) cites A.R.S. § 36-1908 as authority for the Department to set and collect fees. To match the amount appropriated to provide licensure for audiology and speech-language pathology, the Department amended the rules in Article 2 and changed the license fee in R9-16-204 to “a ~~\$50~~ \$100 license fee” and the license renewal license fee in R9-16-206 to a “license renewal fee of ~~\$50~~ \$100.”

<sup>3</sup> 2014 [Notice of Exempt Rulemaking](#) cites Laws 2013, Ch. 33 as authority for the Department to extend the licensing period from one year to two years. Old R9-16-204 was renumbered to R9-16-209 and the license fee was revised from “a \$100 license fee” to “~~a \$100~~ the required license fee.” Old R9-16-206 was renumbered to R9-16-205 and the license renewal fee was revised from “[a] license renewal fee of \$100” to “A \$200 license renewal fee.” Article 2 was significantly amended in this rulemaking; and to account for the change in the licensing period from one year to two years, the licensing fee amounts were adjusted accordingly.

	<p><del>Department.</del> <u>an applicant shall send the Department a \$200 fee for a regular license or a \$100 fee for a temporary license.</u><sup>4</sup></p> <p>To ensure clarity and consistency of the requirements in this Article, the Department plans to create a new subsection for licensing fees, licensing periods, and issuance of a license.</p>
R9-16-210	The rule is understandable, however, would be clearer if the word “of” in subsection (3) were deleted.
R9-16-212	The rule is understandable, however, would be clearer if the American National Standard – Specifications for Audiometers were updated to current 2018 version. Also, in subsection (C) “of the individual” should be changed to refer to “client.”
R9-16-215	The rule is understandable, however, would be clearer if the word “notice” in subsection (A) were changed to “a Department-provided format.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No √

*If yes, please fill out the table below:*

Commenter	Comment	Agency’s Response

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

Most of the rules in 9 A.A.C. 16, Article 2, were adopted in 1999 at 5 A.A.R. 4359. In 2004, R9-16-203, R9-16-204, and R9-16-206 were substantially revised to establish fees associated with the licensing of audiologists and speech-language pathologists required by Laws 2003, Ch. 249, § 1. In 2013 and 2014, the Department through exempt rulemaking provided by Laws 2013, Ch. 33 amended Article 2 rules and added six new Sections and Table 2.1. Pursuant to Laws 2013, Ch. 33, the Department was exempt from the rulemaking requirements in A.R.S. Title 41, Chapter 6 and did not submit an economic, small business, and consumer impact statement (EIS) with the 2014 Notice of Final Exempt Rulemaking. This five-year-review report (report) is the Department’s first Article 2 report since the rules were substantially revised through exempt rulemaking.

The Arizona Department of Health Services (Department) implemented statutory requirements for the licensing of audiologists and speech-language pathologists in Arizona Administrative Code (A.A.C.) in Title 9, Chapter 16, Article 2. As of March 2019, the Department has licensed 373 audiologists (AUDs), 172 audiologists who also dispense hearing aids, and 3,397 speech-language pathologists (SLPs) of which 202 are limited SLPs and 154 are temporary SLPs. During fiscal year 2018, the Department issued 37 initial license and 267 license renewals to audiologists and audiologist who dispense hearing aids; and also issued 458 initial licenses and 1,921 license

<sup>4</sup> Note: The licensing period is used to determine the fee amount. Subsection (E)(2)(a) specifies a two year licensing period for a regular license resulting in a \$200 fee; and subsection (E)(2)(b) specifies a 12 month licensing period for a temporary license resulting in a \$100 fee.

renewals to speech-language pathologists. The Department conducted one complaint investigation for an AUD who dispenses hearing aids and 12 complaint investigations for SLPs. Additionally, eight SLP applications were withdrawn or denied.

The Department believes affected persons include applicants, licensees, businesses and schools that employ audiologists and speech-language pathologists, consumers, and the Department. In assessing the economic, small business, and consumer impact of the new rules, the Department provides a summary of changes considered. The Department in R9-16-201 updated antiquated definitions and outdated references, added the definition “calendar day,” and deleted other antiquated definitions, such as “CE,” “days,” and “license.” In R9-16-202, a change to the licensing period from one year to two years was made and the Section was simplified by moving regular applications for speech-language pathologists and temporary licenses to new Sections in R9-16-203 and R9-16-204, respectively. Similarly, the requirements in R9-16-205, licensing renewal applicants, were changed to make consistent with new R9-16-202 two year licensing period; and the Section was changed to specify licensing renewal application requirements for audiologists and audiologist who fits and dispenses hearing aids. Continuing education requirements were also added. The rules in new R9-15-206 and R9-16-207 contain licensing renewal application requirements for speech-language pathologists and temporary speech-language pathologists; and the licensing period and continuing education requirements were made consistent with the new audiologists’ licensing application rules. The Department also clarified, in all the licensing Sections, that the “Department shall review application packets...according to time-frames established in R9-16-209 and Table 2.1.”

The requirements in R9-16-208 were simplified by moving requirements related to overall time-frame, administrative completeness review time-frame, and substantive review time-frame to new R9-16-209 and Table 2.1 that lists required approvals and related time-frame durations. Further, the Department changed the continuing education completion requirement from 12 months to within 24 months; increase the number of required continuing education hours from eight hours to 10 hours every 12 months to 20 continuing education hours every 24 months; and added lists for acceptable CE course topics and organizations may developed, endorsed, or sponsored CE courses. Amended R9-16-209 was simplified, changed to outdated references, and clarified when the Department will issue a license and for how long a license is considered valid. The Department removed duplicative and antiquated language from R9-16-210, Clinical Fellowship Supervisors; and added new Section, R9-16-211, for supervising a speech-language pathologist assistant. This Section includes requirements for: who may supervise a speech-language pathologist assistant; documenting direct and indirect supervision provided; and maintaining a record for a speech-language pathologist assistant, including each occurrence of direct or indirect supervision provided.

The Department updated citations for specifications for audiometers in R9-16-212 and remove requirement in subsection (D) permitting the Department to inspection equipment in subsection (B) and client records in subsection (C). A new rule in R9-16-213 was added to ensure that a client who purchases a hearing aid from an audiologist who

dispenses hearing aids receives a bill of sale. In amended R9-16-214, the Department added a list of the types of disciplinary actions the Department may assess; added notification of a licensee's right to appeal a disciplinary action taken by the Department; and added requirement to notify an employer if the Department initiates a disciplinary action against a licensee. Lastly, in amended Duplicate License Fee rules, now in R9-16-215, the Department updated antiquated language for obtaining a duplicate license and added requirements for notifying the Department of a change that affects a licensee's license. Other changes were made, including minor technical clarification, to Article 2.

The Department believes having the new rules benefits all affected persons. For example, the Department believes that changing the application renewal from each year to every two years reduces monetary and regulatory costs for applicants and licensees; and the Department believes that adding requirements for supervising speech-language pathologist assistants most likely reduce costs for licensees, businesses, schools, and consumers for having better trained speech-language pathologist assistants. Additionally, the Department believes that affected persons have received significant increased benefits for having new rules that are more clear, effective, and understandable. The Department's overall assessment of the economic, small business, and consumer impact is that the benefits for having the new rules outweigh any associated costs.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No √

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**  
*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The last five-year-review report (Report) for Article 2 rules due December 31, 2014 was rescheduled. On July 30, 2014, the Department requested the Governor's Regulatory Review Council reschedule the Report due to the Department substantially revising the rules in response to Laws 2013, Ch. 33 requiring the Department to extend licensure from one year to two years, make conforming changes to renewal and continuing education requirements, and reduce the regulatory burden on audiologists and speech-language pathologists. On September 12, 2014, the Department's request for rescheduling was granted and changed the Report due date for Article 2 rules to May 31, 2019.

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

The Department believes 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.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No ✓

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

Federal laws are not applicable to the rules in 9 A.A.C. 16, Article 2.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A general permit is not applicable. The Department, pursuant to A.R.S. § 36-1902(A), is authorized to license persons who apply for a license and possess all other qualifications required for licensure as an audiologist or a speech-language pathologist.

14. **Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The Department plans to amend the rules in 9 A.A.C. 16, Article 2 to address issues identified in this five-year-review report in an expedited rulemakings. The Department plans to submit a Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council by December 31, 2019.

# ATTACHMENT A – ARTICLE 2 CURRENT RULES

## ARTICLE 2. LICENSING AUDIOLOGISTS AND SPEECH-LANGUAGE PATHOLOGISTS

### Section

R9-16-201. Definitions

R9-16-202. Application for an Initial License for an Audiologist

R9-16-203. Application for an Initial License for a Speech-language Pathologist

R9-16-204. Application for a Temporary License for a Speech-language Pathologist

R9-16-205. License Renewal for an Audiologist

R9-16-206. License Renewal for a Speech-language Pathologist

R9-16-207. License Renewal for a Temporary Speech-language Pathologist

R9-16-208. Continuing Education

R9-16-209. Time-frames

Table 2.1. Time-frames (in calendar days)

R9-16-210. Clinical Fellowship Supervisors

R9-16-211. Requirements for Supervising a Speech-language Pathologist Assistant

R9-16-212. Equipment; Records

R9-16-213. Bill of Sale Requirements

R9-16-214. Disciplinary Actions

R9-16-215. Changes Affecting a License or a Licensee; Request for a Duplicate License

## ATTACHMENT A – ARTICLE 2 CURRENT RULES

### ARTICLE 2. LICENSING AUDIOLOGISTS AND SPEECH-LANGUAGE PATHOLOGISTS

#### R9-16-201. Definitions

In addition to the definitions in A.R.S. § 36-1901, the following definitions apply in this Article, unless otherwise specified:

1. "Accredited" means approved by the:
  - a. New England Association of Schools and Colleges,
  - b. Middle States Commission on Higher Education,
  - c. North Central Association of Colleges and Schools,
  - d. Northwest Commission on Colleges and Universities,
  - e. Southern Association of Colleges and Schools, or
  - f. Western Association of Schools and Colleges.
2. "Applicant" means:
  - a. An individual who submits an application packet; or
  - b. A person who submits a request for approval for a continuing education course.
3. "Application packet" means the information, documents, and fees required by the Department for a license.
4. "ASHA" means the American Speech-Language-Hearing Association, a national scientific and professional organization for audiologists and speech-language pathologists
5. "Calendar day" means each day, not including the day of the act, event, or default, from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. "CCC" means Certificate of Clinical Competence, an award issued by ASHA to an individual who:
  - a. Completes a degree in audiology or speech-language pathology from an accredited college or university that includes a clinical practicum,
  - b. Passes the ETSNEA or ETSNESLP, and
  - c. Completes a clinical fellowship.
7. "Clinical fellow" means an individual engaged in a clinical fellowship.

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8. "Clinical fellowship" means an individual's postgraduate professional experience assessing, diagnosing, screening, treating, writing reports, and counseling individuals exhibiting speech, language, hearing, or communication disorders, obtained:
  - a. After completion of graduate level academic course work and a clinical practicum;
  - b. Under the supervision of a clinical fellowship supervisor; and
  - c. While employed on a full-time or part-time equivalent basis.
9. "Clinical fellowship agreement" means the document submitted to the Department by a clinical fellow to register the initiation of a clinical fellowship.
10. "Clinical fellowship report" means a document completed by a clinical fellowship supervisor containing:
  - a. A summary of the diagnostic and therapeutic procedures performed by the clinical fellow,
  - b. A verification by the clinical fellowship supervisor of the clinical fellow's performance of diagnostic and therapeutic procedures, and
  - c. An evaluation of the clinical fellow's ability to perform the diagnostic and therapeutic procedures.
11. "Clinical fellowship supervisor" means a licensed speech-language pathologist who:
  - a. Is a sponsor of a temporary licensee,
  - b. Had a CCC while supervising a clinical fellow before October 28, 1999, or
  - c. Has a CCC while supervising a clinical fellow in another state.
12. "Clinical practicum" means the experience acquired by an individual who is completing course work in audiology or speech-language pathology, while supervised by a licensed audiologist, a licensed speech-language pathologist, or an individual holding a CCC, by assessing, diagnosing, evaluating, screening, treating, and counseling individuals exhibiting speech, language, cognitive, hearing, or communication disorders.
13. "Continuing education" means a course that provides instruction and training that is designed to develop or improve the licensee's professional competence in disciplines directly related to the licensee's scope of practice.
14. "Course" means a workshop, seminar, lecture, conference, or class.
15. "Current CCC" means documentation issued by ASHA verifying that an individual is presently certified by ASHA.

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16. "Department-designated written hearing aid dispenser examination" means one of the following that has been identified by the Department as complying with the requirements in A.R.S. § 36-1924:
  - a. The International Licensing Examination for Hearing Healthcare Professionals, administered by the International Hearing Society; or
  - b. A test provided by the Department or other organization.
17. "Diagnostic and therapeutic procedures" means the principles and methods used by an audiologist in the practice of audiology or a speech-language pathologist in the practice of speech-language pathology.
18. "Disciplinary action" means a proceeding that is brought against a licensee by the Department under A.R.S. § 36-1934 or a state licensing entity.
19. "ETSNEA" means Educational Testing Service National Examination in Audiology, the specialty area test of the Praxis Series given by the Education Testing Service, Princeton, N.J.
20. "ETSNESLP" means Educational Testing Service National Examination in Speech-Language Pathology, the specialty area test of the Praxis Series given by the Education Testing Service, Princeton, N.J.
21. "Full-time" means 30 clock hours or more per week.
22. "Graduate level" means leading to, or creditable towards, a master's or doctoral degree.
23. "Local education agency" means a school district governing board established by A.R.S. §§ 15-301 through 15-396.
24. "Monitoring" means being responsible for and providing direction to a clinical fellow without directly observing diagnostic and therapeutic procedures.
25. "On-site" observations" means the presence of a clinical fellowship supervisor who is watching a clinical fellow perform diagnostic and therapeutic procedures.
26. "Part-time equivalent" means:
  - a. 25-29 clock hours per week for 48 weeks,
  - b. 20-24 clock hours per week for 60 weeks, or
  - c. 15-19 clock hours per week for 72 weeks.
27. "Pupil" means a child attending a school, a charter school, a private school, or an accommodation school as defined in A.R.S. § 15-101.

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28. "Semester credit hour" means one earned academic unit of study based on completing, at an accredited college or university, a 50 to 60 minute class session per calendar week for 15 to 18 weeks.
29. "Semester credit hour equivalent" means one quarter credit, which is equal in value to 2/3 of a semester credit hour.
30. "State-supported institution" means a school receiving funding under A.R.S. §§ 15-901 through 15-1045.
31. "Supervise" means being responsible for and providing direction to:
  - a. A clinical fellow during on-site observations or monitoring of the clinical fellow's performance of diagnostic and therapeutic procedures; or
  - b. An individual completing a clinical practicum.
32. "Supervisory activities" means evaluating and assessing a clinical fellow's performance of diagnostic and therapeutic procedures in assessing, diagnosing, evaluating, screening, treating, and counseling individuals exhibiting speech, language, cognitive, hearing, or communication disorders.
33. "Week" means the period of time beginning at 12:00 a.m. on Sunday and ending at 11:59 p.m. the following Saturday.

### **R9-16-202. Application for an Initial License for an Audiologist**

- A. Except as provided in subsection (B), an applicant for an audiology license or an audiology license to fit and dispense shall submit to the Department:
  1. An application in a format provided by the Department that contains:
    - a. The applicant's name, home address, telephone number, and e-mail address;
    - b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
    - c. If applicable, the applicant's business address and telephone number;
    - d. If applicable, the name of applicant's employer, including the employer's business address and telephone number;
    - e. Whether the applicant is requesting an audiology license to fit and dispense;
    - f. Whether the applicant has ever been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
    - g. If the applicant has been convicted of a felony or a misdemeanor involving moral turpitude:
      - i. The date of the conviction,

## ATTACHMENT A – ARTICLE 2 CURRENT RULES

- ii. The state or jurisdiction of the conviction,
    - iii. An explanation of the crime of which the applicant was convicted, and
    - iv. The disposition of the case;
  - h. Whether the applicant is or has been licensed as an audiologist or an audiologist to fit and dispense hearing aids in another state or country;
  - i. Whether the applicant has had a license revoked or suspended by any state within the previous two years;
  - j. Whether the applicant is currently ineligible for licensing in any state because of a license revocation or suspension;
  - k. Whether any disciplinary action has been imposed by any state, territory or district in this country for an act related to the applicant's practice of audiology;
  - l. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-209;
  - m. An attestation that the information submitted is true and accurate; and
  - n. The applicant's signature and date of signature;
2. If a license for the applicant has been revoked or suspended by any state within the previous two years, documentation that includes:
- a. The date of the revocation or suspension,
  - b. The state or jurisdiction of the revocation or suspension, and
  - c. An explanation of the revocation or suspension;
3. If the applicant is currently ineligible for licensing in any state because of a license revocation or suspension, documentation that includes:
- a. The date of the ineligibility for licensing,
  - b. The state or jurisdiction of the ineligibility for licensing, and
  - c. An explanation of the ineligibility for licensing;
4. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's audiologist license that is grounds for disciplinary action under Title 37, Chapter 17, documentation that includes:
- a. The date of the disciplinary action,
  - b. The state or jurisdiction of the disciplinary action,
  - c. An explanation of the disciplinary action, and
  - d. Any other applicable documents, including a legal order or settlement agreement;

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5. If applicable, a list of all states and countries in which the applicant is or has been licensed as an audiologist or an audiologist to fit and dispense hearing aids;
  6. A copy of the applicant's:
    - a. U.S. passport, current or expired;
    - b. Birth certificate;
    - c. Naturalization documents; or
    - d. Documentation of legal resident alien status;
  7. One of the following:
    - a. A copy of the applicant's official transcript issued to the applicant by an accredited college or university after the applicant's completion of a doctoral degree consistent with the standards of this state's universities, as required in A.R.S. § 36-1940(A)(2); or
    - b. Documentation that the applicant is eligible for a waiver, according to A.R.S. § 36-1940.02(C), of the education and clinical rotation requirements in A.R.S. § 36-1940;
  8. Documentation:
    - a. Of a passing grade on a ETSNEA dated within three years before the date of application required in A.R.S. § 36-1902(E);
    - b. Of a current CCC completed by the applicant within three years before the date of application; or
    - c. The applicant is eligible for a waiver, according to A.R.S. § 36-1940.02(D), of the audiology examination requirements in A.R.S. § 36-1940; and
  9. A nonrefundable \$100 application fee.
- B.** An applicant for an audiology license to fit and dispense hearing aids who was awarded a master's degree before December 31, 2007 shall submit to the Department:
1. An application in a format provided by the Department that contains the information in subsections (A)(1) through (A)(7) and (A)(9);
  2. A copy of the applicant's official transcript from an accredited college or university demonstrating the applicant's completion of a master's degree in audiology before December 31, 2007;
  3. Documentation that the applicant is eligible, according to A.R.S. § 36-1940.02(C), for a waiver of the education and clinical rotation requirements in A.R.S. § 36-1940;
  4. Documentation that the applicant:

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- a. Has a passing grade on a ETSNEA completed within three years before the date of application;
  - b. Has a CCC completed within three years before the date of application; or
  - c. Is eligible for a waiver, according to A.R.S. § 36-1940.02(D), of the audiology examination requirements in A.R.S. § 36-1940; and
5. Documentation:
- a. Of a passing grade obtained by the applicant on a Department designated written hearing aid dispenser's examination as required in A.R.S. § 36-1940(C); or
  - b. That the applicant is eligible for a waiver, according to A.R.S. § 36-1940.02(E), of the hearing aid dispensing examination requirements in A.R.S. § 36-1940.
- C. The Department shall review the application packet for a license to practice as an audiologist, an audiologist to fit and dispense hearing aids, or an audiologist, who has a master's degree, to fit and dispense hearing aids, as applicable, according to R9-16-209 and Table 2.1.
- D. An audiologist with a doctoral degree in audiology who is licensed to fit and dispense hearing aids shall take and pass a Department-provided jurisprudence and ethics examination within six months after the issue date of the audiologist's license.

### **R9-16-203. Application for an Initial License for a Speech-language Pathologist**

- A. Except as provided in subsection (B), an applicant for a speech-language pathologist license shall submit to the Department:
1. An application in a format provided by the Department that contains:
    - a. The applicant's name, home address, telephone number, and e-mail address;
    - b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
    - c. If applicable, the applicant's business address and telephone number;
    - d. If applicable, the name of the applicant's employer, including the employer's business address and telephone number;
    - e. Whether the applicant has ever been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
    - f. If the applicant has been convicted of a felony or a misdemeanor involving moral turpitude:
      - i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the applicant was convicted, and

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- iv. The disposition of the case;
  - g. Whether the applicant is or has been licensed as a speech-language pathologist in another state or country;
  - h. Whether the applicant has had a license revoked or suspended by any state within the previous two years;
  - i. Whether the applicant is currently ineligible for licensing in any state because of a license revocation or suspension;
  - j. Whether a disciplinary action has been imposed by any state, territory, or district in this country for an act related to the applicant's speech-language pathologist license;
  - k. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-209;
  - l. An attestation that the information submitted is true and accurate; and
  - m. The applicant's signature and date of signature;
2. If applicable, a list of all states and countries in which the applicant is or has been licensed as speech-language pathologist;
  3. If a license for the applicant has been revoked or suspended by any state within the previous two years, documentation that includes:
    - a. The date of the revocation or suspension,
    - b. The state or jurisdiction of the revocation or suspension, and
    - c. An explanation of the revocation or suspension;
  4. If the applicant is currently ineligible for licensing in any state because of a license revocation or suspension, documentation that includes:
    - a. The date of the ineligibility for licensing,
    - b. The state or jurisdiction of the ineligibility for licensing, and
    - c. An explanation of the ineligibility for licensing;
  5. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's speech-language pathologist license that is grounds for disciplinary action under Title 37, Chapter 17, documentation that includes:
    - a. The date of the disciplinary action;
    - b. The state or jurisdiction of the disciplinary action;
    - c. An explanation of the disciplinary action; and
    - d. Any other applicable documents, including a legal order or settlement agreement;

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6. A copy of the applicant's:
    - a. U.S. passport, current or expired;
    - b. Birth certificate;
    - c. Naturalization documents; or
    - d. Documentation of legal resident alien status;
  7. Documentation of the applicant's:
    - a. Official transcript issued to the applicant by an accredited college or university after the applicant's completion of a master's degree consistent with the standards of this state's universities;
    - b. Completion of a clinical practicum, as required in A.R.S. § 36-1940.01(A)(2)(b); and
    - c. One of the following:
      - i. Completion of clinical fellowship signed by the clinical fellowship supervisor as required in A.R.S. § 36-1940.01(A)(2)(c); or
      - ii. Completion of a CCC within three years before the date of the application;
  8. Documentation:
    - a. Of the applicant's passing score on the ETSNESLP; or
    - b. That the applicant is eligible for a waiver, according to A.R.S. § 36-1940.02(B), from the examination requirements in A.R.S. § 36-1940.01; and
  9. A nonrefundable \$100 application fee.
- B.** An applicant for a speech-language pathologist license, limited to providing services to pupils under the authority of a local education agency or state-supported institution, shall submit:
1. An application in a format provided by the Department that contains requirements in subsections (A)(1) through (6) and (A)(9);
  2. A copy of an employee agreement or employment contract, conditioned upon the applicant's receipt of a speech-language pathologist license, with a local education agency or a state-supported institution that includes the:
    - a. Applicant's name and Social Security number,
    - b. Name of the local education agency or state-supported institution,
    - c. Classification title of the applicant,
    - d. Work dates or projected work dates of the employment contract, and

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- e. Signatures of the applicant and the individual authorized by the governing board to represent the local education agency or state-supported institution; and
- 3. A copy of a temporary or regular certificate in speech and language therapy issued by the State Board of Education to the applicant.
- C. The Department shall review an application packet for a license to practice as a speech-language pathologist according to R9-16-209 and Table 2.1.

### **R9-16-204. Application for a Temporary License for a Speech-Language Pathologist License**

- A. An applicant for a temporary speech-language pathologist license shall submit to the Department:
  - 1. An application in a format provided by the Department that contains:
    - a. The applicant's name, home address, telephone number, and e-mail address;
    - b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
    - c. If applicable, the applicant's business address and telephone number;
    - d. If applicable, the name of the applicant's employer, including the employer's business address and telephone number;
    - e. Whether the applicant has ever been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
    - f. If the applicant has been convicted of a felony or a misdemeanor involving moral turpitude:
      - i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the applicant was convicted, and
      - iv. The disposition of the case;
    - g. Whether the applicant is or has been licensed as a speech-language pathologist in another state or country;
    - h. Whether the applicant has had a license revoked or suspended by any state within the previous two years;
    - i. Whether the applicant is currently ineligible for licensing in any state because of a license revocation or suspension;
    - j. Whether any disciplinary action, consent order, or settlement agreement is pending or has been imposed by any state or country upon the applicant's speech-language pathologist license;

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- k. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-209;
  - l. An attestation that the information submitted is true and accurate; and
  - m. The applicant's signature and date of signature;
2. If applicable, a list of all states and countries in which the applicant is or has been licensed as a speech-language pathologist;
  3. If a license for the applicant has been revoked or suspended by any state within the previous two years, documentation that includes:
    - a. The date of the revocation or suspension,
    - b. The state or jurisdiction of the revocation or suspension, and
    - c. An explanation of the revocation or suspension;
  4. If the applicant is currently ineligible for licensing in any state because of a license revocation or suspension, documentation that includes:
    - a. The date of the ineligibility for licensing,
    - b. The state or jurisdiction of the ineligibility for licensing, and
    - c. An explanation of the ineligibility for licensing;
  5. If the applicant has been disciplined by any state, territory or district of this country for an act related to the applicant's audiologist license that is grounds for disciplinary action under Title 37, Chapter 17, documentation that includes:
    - a. The date of the disciplinary action;
    - b. The state or jurisdiction of the disciplinary action;
    - c. An explanation of the disciplinary action; and
    - d. Any other applicable documents, including a legal order or settlement agreement;
  6. A copy of the applicant's:
    - a. U.S. passport, current or expired;
    - b. Birth certificate;
    - c. Naturalization documents; or
    - d. Documentation of legal resident alien status;
  7. Documentation of the applicant's:
    - a. Official transcript issued to the applicant by an accredited college or university after the applicant's completion of a master's degree consistent with the standards of this state's universities, as required in A.R.S. § 36-1940.01(A)(2)(a); and
    - b. Completion of a clinical practicum, as required in A.R.S. § 36-1940.01(A)(2)(b);

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8. A copy of the applicant's clinical fellowship agreement that includes:
    - a. The applicant's name, home address, and telephone number;
    - b. The clinical fellowship supervisor's name, business address, telephone number, and Arizona audiology or speech-language pathology license number;
    - c. The name and address where the clinical fellowship will take place;
    - d. A statement by the clinical fellowship supervisor agreeing to comply with R9-16-210; and
    - e. The signatures of the applicant and the clinical fellowship supervisor;
  9. Documentation of the applicant's completion of the ETSNESLP as required in A.R.S. § 36-1940.01(A)(3); and
  10. A nonrefundable \$100 application fee.
- B.** A temporary license issued is effective for 12 months from the date of issuance.
- C.** A temporary license may be renewed only once.
- D.** An applicant issued a temporary speech-language pathologist license shall:
1. Practice under the supervision of a licensed speech-language pathologist, and
  2. Not practice under the supervision of individual who has a temporary speech-language pathologist license.
- E.** The Department shall review an application packet for a temporary speech-language pathologist license according to R9-16-209 and Table 2.1.

### **R9-16-205. License Renewal for an Audiologist**

- A.** Except as provided in subsection (B) and before the expiration date of the audiologist's license, a licensed audiologist or audiologist who fits and dispenses hearing aids shall submit to the Department:
1. A renewal application in a format provided by the Department that contains:
    - a. The applicant's name, home address, telephone number, and e-mail address;
    - b. If applicable, the applicant's business address and telephone number;
    - c. If applicable, the name of the applicant's employer, including the employer's business address and telephone number;
    - d. The applicant's license number and date of expiration;
    - e. Since the previous license application, whether the applicant has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
    - f. If the applicant was convicted of a felony or a misdemeanor involving moral turpitude:

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- i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the applicant was convicted, and
      - iv. The disposition of the case;
    - g. Whether the applicant has had, within two years before the renewal application date, an audiologist license suspended or revoked by any state;
    - h. An attestation that the information submitted is true and accurate; and
    - i. The applicant's signature and date of signature;
  2. Documentation of the continuing education required in R9-16-208, completed within the two years before the expiration date of the license, including:
    - a. The name of the individual or organization providing the course;
    - b. The date and location where the course was provided;
    - c. The title of each course attended;
    - d. A description of each course's content;
    - e. The name of the instructor;
    - f. The instructor's education, training, and experience background, if applicable; and
    - g. The number of continuing education hours earned for each course; and
  3. A \$200 license renewal fee.
- B.** In addition to the documentation and renewal fee in subsection (A), an applicant who submits a renewal application within 30 calendar days after the license expiration date shall submit a \$25 late fee.
- C.** An applicant who does not submit the documentation and the fee in subsection (A) and, if applicable, (B) within 30 calendar days after the license expiration date shall apply for a new license in R9-16-202.
- D.** If an applicant applies for a license according to R9-16-202 more than 30 calendar days but less than one year after the expiration date of the applicant's previous license, the applicant:
1. Is not required to submit ETSNEA documentation, and
  2. Shall submit documentation of continuing education according to R9-16-208, completed within the two years before the date of application.
- E.** The Department shall review the application packet for a renewal license to practice as an audiologist or an audiologist to fit and dispense hearing aids according to R9-16-209 and Table 2.1.

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### **R9-16-206. License Renewal for a Speech-language Pathologist**

- A.** Except as provided in subsection (B) and before the expiration date of the speech-language pathologist's license, a licensed speech-language pathologist shall submit to the Department:
1. A renewal application in a format provided by the Department that contains:
    - a. The applicant's name, home address, telephone number, and e-mail address;
    - b. If applicable, the applicant's business address and telephone number;
    - c. If applicable, the name of the applicant's employer, including the employer's business address and telephone number;
    - d. The applicant's license number and date of expiration;
    - e. Since the previous license application, whether the applicant has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
    - f. If the applicant was convicted of a felony or a misdemeanor:
      - i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the applicant was convicted, and
      - iv. The disposition of the case;
    - g. Whether the applicant had, within two years before the renewal application date, a speech-language pathologist license suspended or revoked by any state;
    - h. An attestation that the information submitted is true and accurate; and
    - i. The applicant's signature and date of signature;
  2. Documentation of the continuing education required in R9-16-208, completed within the two years before the expiration date of the license, including:
    - a. The name of the individual or organization providing the course;
    - b. The date and location where the course was provided;
    - c. The title of each course attended;
    - d. The description of each course's content;
    - e. The name of the instructor;
    - f. The instructor's education, training, and experience background, if applicable; and
    - g. The number of continuing education hours earned for each course;
  3. If the applicant is limited to providing speech-language pathology services to pupils under the authority of a local education agency or state-supported institution the documents required in R9-16-203(B); and

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4. A \$200 license renewal fee.
- B.** In addition to the documentation and renewal fee in subsection (A), an applicant who submits a renewal application within 30 calendar days after the license expiration date shall submit a \$25 late fee.
- C.** An applicant who does not submit the documentation and the fee in subsection (A) and, if applicable, (B) within 30 calendar days after the license expiration date shall apply for a new license in R9-16-203.
- D.** If an applicant applies for a license according to R9-16-203 more than 30 calendar days but less than one year after the expiration date of the applicant's previous license, the applicant:
  1. Is not required to submit ETSNESLP documentation, and
  2. Shall submit documentation of continuing education according to R9-16-208 completed within the two years before the date of application.
- E.** The Department shall review the application packet for a renewal license to practice as a speech-language pathologist according to R9-16-209 and Table 2.1.

### **R9-16-207. License Renewal for a Temporary Speech-language Pathologist**

- A.** Before the expiration date of the temporary speech-language pathologist license, a licensed temporary speech-language pathologist shall submit to the Department:
  1. A renewal application in a format provided by the Department that contains:
    - a. The applicant's name, home address, e-mail address, and telephone number;
    - b. The applicant's license number and date of expiration;
    - c. The name of the applicant's employer, including the employer's business address, and telephone number;
    - d. The name, business address, telephone number, and license number of the speech language pathologist providing supervision to the applicant;
    - e. Since the previous license application, whether the applicant has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
    - f. If the applicant was convicted of a felony or a misdemeanor:
      - i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the applicant was convicted, and
      - iv. The disposition of the case;
    - g. An attestation that the information submitted is true and accurate; and
    - h. The applicant's signature and date of signature;

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2. A statement signed and dated by the applicant's clinical fellowship supervisor agreeing to comply with R9-16-210; and
  3. A \$100 license renewal fee.
- B.** The Department shall review the application packet for a renewal temporary license to practice as a temporary speech-language pathologist according to R9-16-209 and Table 2.1.

### **R9-16-208. Continuing Education**

- A.** Every 24 months after the effective date of a regular license, a licensee shall complete continuing education approved by the Department.
1. Except as provided in (A)(2), a licensed audiologist shall complete at least 20 continuing education hours related to audiology;
  2. A licensed audiologist who fits and dispenses hearing aids shall complete:
    - a. At least 20 continuing education hours related to audiology and hearing aid dispensing, and
    - b. No more than eight continuing education hours required in subsection (A)(2)(a) provided by a single manufacturer of hearing aids; and
  3. A licensed speech-language pathologist shall complete at least 20 continuing education hours in speech-language pathology related courses.
- B.** Continuing education shall:
1. Directly relate to the practice of audiology, speech-language pathology, or fitting and dispensing hearing aids;
  2. Have educational objectives that exceed an introductory level of knowledge of audiology, speech-language pathology, or fitting and dispensing hearing aids; and
  3. Consist of courses that include advances within the last five years in:
    - a. Practice of audiology,
    - b. Practice of speech-language pathology,
    - c. Procedures in the selection and fitting of hearing aids,
    - d. Pre- and post-fitting management of clients,
    - e. Instrument circuitry and acoustic performance data,
    - f. Ear mold design and modification contributing to improved client performance,
    - g. Audiometric equipment or testing techniques that demonstrate an improved ability to identify and evaluate hearing loss,
    - h. Auditory rehabilitation,
    - i. Ethics,

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- j. Federal and state statutes or rules, or
  - k. Assistive listening devices.
- C.** A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (B):
- 1. Hearing Healthcare Providers of Arizona,
  - 2. Arizona Speech-Language-Hearing Association,
  - 3. American Speech-Language-Hearing Association,
  - 4. International Hearing Society,
  - 5. International Institute for Hearing Instrument Studies,
  - 6. American Auditory Society,
  - 7. American Academy of Audiology,
  - 8. Academy of Doctors of Audiology,
  - 9. Arizona Society of Otolaryngology-Head and Neck Surgery,
  - 10. American Academy of Otolaryngology-Head and Neck Surgery, or
  - 11. An organization determined by the Department to be consistent with an organization in subsection (C)(1) through (10).
- D.** An applicant may request approval for a continuing education course by submitting the following to the Department:
- 1. The applicant's name, address, telephone number, and e-mail address, as applicable;
  - 2. If the applicant is a licensee, the licensee's license number;
  - 3. The title of the continuing education course;
  - 4. A brief description of the course;
  - 5. The name, educational background, and teaching experience of the individual presenting the course, if available;
  - 6. The educational objectives of the course; and
  - 7. The date, time, and place of presentation of the course.
- E.** If an applicant submits the information in subsection (D), the Department shall review the request for approval for a continuing education course according to R9-16-209 and Table 2.1.
- F.** The Department shall approve a continuing education course if the Department determines that the continuing education course:
- 1. Is designed to provide current developments, skills, procedures, or treatment in diagnostic and therapeutic procedures in audiology, speech-language pathology, or hearing aid dispensing;

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2. Is developed and presented by individuals knowledgeable and experienced in the subject area; and
3. Contributes directly to the professional competence of a licensee.

### **R9-16-209. Time-frames**

- A.** For each type of license or approval issued by the Department under this Article, Table 2.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).
  1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
  2. The extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B.** For each type of license or approval issued by the Department under this Article, Table 2.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1), which begins on the date the Department receives an application packet.
  1. The administrative completeness review time-frame begins:
    - a. The date the Department receives an application packet required in this Article, or
    - b. The date the Department receives a request for continuing education course approval according to R9-16-208.
  2. Except as provided in subsection (B)(3), the Department shall provide a written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
    - a. If a license application packet or request for continuing education course approval is not complete, the notice of deficiencies listing each deficiency and the information or documentation needed to complete the license application packet or request for continuing education course approval.
    - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
    - c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the license application packet or request for continuing education course approval withdrawn.

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3. If the Department issues a license or approval during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C.** For each type of license or approval issued by the Department under this Article, Table 2.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.
1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department approved or denied the license or continuing education course approval.
  2. During the substantive review time-frame:
    - a. The Department may make one comprehensive written request for additional information or documentation; and
    - b. If the Department and the applicant agree in writing to allow one or more supplemental requests for additional information or documentation, the Department may make the number of supplemental requests agreed to between the Department and the applicant.
  3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.
  4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the license or approval.
- D.** After receiving the written notice of approval in an applicant for a regular license or a temporary license shall send the required license fee to the Department. If the applicant does not submit the license fee within 30 calendar days after the date the Department sends the written notice of approval to the applicant, the Department shall consider the application withdrawn.
- E.** The Department shall issue a regular license or a temporary license:
1. Within five calendar days after receiving the license fee, and
  2. From the date of issue, the license is valid for:
    - a. Two years, if a regular license, and
    - b. Twelve months, if a temporary license.

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- F. An applicant who is denied a license may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

**Table 2.1. Time-frames (in calendar days)**

<b>Type of Approval</b>	<b>Statutory Authority</b>	<b>Overall Time-Frame</b>	<b>Administrative Completeness Review Time-Frame</b>	<b>Time to Respond to Notice of Deficiency</b>	<b>Substantive Review Time-Frame</b>	<b>Time to Respond to Comprehensive Written Request</b>
Application for an Initial License for an Audiologist (R9-16-202)	A.R.S. §§ 36-1904 and 36-1940	60	30	30	30	30
Application for an Initial License for a Speech-language Pathologist (R9-16-203)	A.R.S. §§ 36-1904 and 36-1940.01	60	30	30	30	30
Application for Temporary License for a Speech-language Pathologist (R9-16-204)	A.R.S. §§ 36-1904 and 36-1940.03	60	30	30	30	30
License Renewal for an Audiologist (R9-16-205)	A.R.S. § 36-1904	60	30	30	30	30
License Renewal for a	A.R.S. § 36-1904	60	30	30	30	30

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Speech-language Pathologist (R9-16-206)						
License Renewal for a Temporary Speech-language Pathologist (R9-16-207)	A.R.S. §§ 36-1904 and 36-1940.03	60	30	30	30	30
Approval of Continuing Education Course (R9-16-208)	A.R.S. § 36-1904	45	30	30	15	30

**R9-16-210. Clinical Fellowship Supervisors**

In addition to complying with the requirements in A.R.S. § 36-1905, a clinical fellowship supervisor shall:

1. Complete a minimum of 36 supervisory activities throughout an individual's clinical fellowship that include:
  - a. A minimum of 18 on-site observations,
  - b. No more than six on-site observations in a 24-hour period, and
  - c. A minimum of 18 monitoring activities;
2. Submit a copy of the clinical fellowship report to the Department within 30 calendar days after the completion of the clinical fellowship; and
3. Provide the Department and the clinical fellow with written notice within 72 hours of after the decision to stop supervising the clinical fellow if the clinical fellowship supervisor voluntarily stops supervising a clinical fellow before the completion of the clinical fellowship.

**R9-16-211. Requirements for Supervising a Speech-language Pathologist Assistant**

A licensed speech-language pathologist who provides direct supervision or indirect supervision to a speech-language pathologist assistant shall:

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1. Have at least two years of full-time professional experience as a licensed speech-language pathologist;
2. Provide direct supervision or indirect supervision to no more than two full-time or three part-time speech-language pathologist assistants at one time;
3. Ensure that the amount and type of direct supervision and indirect supervision provided is consistent with:
  - a. The speech-language pathologist assistant's skills and experience,
  - b. The needs of the clients served,
  - c. The setting where the services are provided, and
  - d. The tasks assigned;
4. Inform a client when the services of a speech-language pathology assistant is being provided;
5. Document each occurrence of direct supervision and indirect supervision provided to a speech-language pathology assistant, including:
  - a. The speech-language pathologist assistant's name and license number,
  - b. The name and address of business where services occurred, and
  - c. The date and type of supervision provided;
6. Ensure that the amount and type of direct supervision and indirect supervision provided to a speech-language pathology assistant is:
  - a. A minimum of 20 per cent direct supervision and 10 per cent indirect supervision during the first 90 days of employment; and
  - b. Subsequent to the first 90 days of employment, a minimum of 10 per cent direct supervision and 10 per cent indirect supervision;
7. If more than one licensed speech-language pathologist provides direct supervision or indirect supervision to a speech-language pathology assistant, designate one speech-language pathologist as the primary speech-language pathologist who is responsible for coordinating direct supervision and indirect supervision provided by other speech-language pathologists;
8. Establish a record for each speech-language pathologist assistant who receives direct supervision and indirect supervision from the speech-language pathologist that includes:
  - a. The speech-language pathologist assistant's name, home address, telephone number, and e-mail;

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- b. A plan indicating the types of skills and the number of hours allocated to the development of each skill that the speech-language pathologist assistant is expected to complete;
  - c. A document listing each occurrence of direct supervision or indirect supervision provided to the speech-language pathologist assistant that includes:
    - i. Business name and address where supervision occurred;
    - ii. The times when the supervision started and ended,
    - iii. The types of clinical interactions provided; and
    - iv. Notation of speech-language pathologist assistant's progress;
  - d. Documentation of evaluations provided to the speech-language pathologist assistant during the time supervision was provided; and
  - e. Documentation of when supervision was terminated; and
9. Maintain a speech-language pathologist assistant record:
- a. Throughout the period that the speech-language pathologist assistant receives direct supervision and indirect supervision clinical interactions from the supervisor; and
  - b. For at least two years after the last date the speech-language pathologist assistant received clinical interactions from the supervisor.

### **R9-16-212. Equipment; Records**

- A. A licensee shall maintain equipment used by the licensee in the practice of audiology or the practice of speech-language pathology according to the manufacturer's specifications.
- B. If a licensee uses equipment that requires calibration, the licensee shall ensure that:
  - 1. The equipment is calibrated a minimum of every 12 months and according to the American National Standard - Specifications for Audiometers S3.6-2010, Standards Secretariat, c/o Acoustical Society of America, 1305 Walt Whitman Road, Suite 300, Melville, New York, 11747-4300, November 2, 2010, incorporated by reference and on file with the Department and the Office of the Secretary of State with no future additions or amendments; and
  - 2. A written record of the calibration is maintained in the same location as the calibrated equipment for at least 36 months after the date of the calibration.
- C. A licensee shall maintain the following records according to A.R.S. § 32-3211 for each client for at least 36 months after the date the licensee provided a service or dispensed a product while

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engaged in the practice of audiology, practice of speech-language pathology, or practice of fitting and dispensing hearing aids:

1. The name, address, and telephone number of the individual to whom services are provided;
2. The name or description and the results of each test and procedure used in evaluating speech, language, and hearing disorders or determining the need for dispensing a product or service; and
3. If a product such as a hearing aid, augmentative communication device, or laryngeal device is dispensed, a record of the following:
  - a. The name of the product dispensed;
  - b. The product's serial number, if any;
  - c. The product's warranty or guarantee, if any;
  - d. The refund policy for the product, if any;
  - e. A statement of whether the product is new or used;
  - f. The total amount charged for the product;
  - g. The name of the licensee; and
  - h. The name of the intended user of the product.

### **R9-16-213. Bill of Sale Requirements**

An audiologist who dispenses hearing aids shall provide a bill of sale to a client at the time the audiologist provides a hearing aid to the client or at a time requested by the client that complies with the requirements in R9-16-314.

### **R9-16-214. Disciplinary Actions**

- A.** The Department may, as applicable:
  1. Deny, revoke, or suspend an audiologist or speech-language pathologist's license under A.R.S. § 36-1934;
  2. Request an injunction under A.R.S. § 36-1937; or
  3. Assess a civil money penalty under A.R.S. § 36-1939.
- B.** In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
  1. The type of violation,
  2. The severity of the violation,
  3. The danger to the public health and safety,
  4. The number of violations,

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5. The number of clients affected by the violations,
  6. The degree of harm to the consumer,
  7. A pattern of noncompliance, and
  8. Any mitigating or aggravating circumstances.
- C.** A licensee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.
- D.** The Department shall notify a licensee’s employer within five calendar days after the Department initiates a disciplinary action against a licensee.

### **R9-16-215. Changes Affecting a License or a Licensee; Request for a Duplicate License**

- A.** A licensee shall submit a notice to the Department in writing within 30 calendar days after the effective date of a change in:
1. The licensee’s home address or e-mail address, including the new home address or e-mail address;
  2. The licensee’s name, including a copy of one of the following with the licensee’s new name:
    - a. Marriage certificate,
    - b. Divorce decree, or
    - c. Other legal document establishing the licensee’s new name; and
  3. The place or places, including address or addresses, where the licensee engages in the practice of audiology, speech-language pathology, or fitting and dispensing hearing aids.
- B.** A licensee may obtain a duplicate license by submitting to the Department a written request for a duplicate license in a format provided by the Department that includes:
1. The licensee’s name and address,
  2. The licensee’s license number and expiration date,
  3. The licensee’s signature and date of signature, and
  4. A \$25 duplicate license fee.

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### **36-104. Powers and duties**

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:
  - (a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.
  - (b) Public health support services, which shall include at a minimum:
    - (i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.
    - (ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.
    - (iii) Laboratory services programs.
    - (iv) Health education and training programs.
    - (v) Disposition of human bodies programs.
  - (c) Community health services, which shall include at a minimum:
    - (i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.
    - (ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.
    - (iii) Children with physical disabilities services programs.
    - (iv) Programs for the prevention and early detection of an intellectual disability.
  - (d) Program planning, which shall include at least the following:
    - (i) An organizational unit for comprehensive health planning programs.
    - (ii) Program coordination, evaluation and development.
    - (iii) Need determination programs.
    - (iv) Health information programs.
2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.
3. Make rules for the organization and proper and efficient operation of the department.
4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.
5. Provide a system of unified and coordinated health services and programs between this state and county governmental

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health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.
10. Establish and maintain separate financial accounts as required by federal law or regulations.
11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
12. Take appropriate steps to reduce or contain costs in the field of health services.
13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.
14. Encourage an effective use of available federal resources in this state.
15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.
16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.
17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.
19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.
22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not

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lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.
24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.
25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).
26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

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

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

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In

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cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

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

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- (b) Comprehensive prenatal health care.
  - (c) Maternity, delivery and postpartum care.
  - (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
  - (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
- B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.
- C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

### **36-136. Powers and duties of director; compensation of personnel; rules; definitions**

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

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6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
  7. Prepare sanitary and public health rules.
  8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.
- D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
- E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:
1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.
  2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
- F. The compensation of all personnel shall be as determined pursuant to section 38-611.

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- G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
- H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
- I. The director, by rule, shall:
1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
  2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
  3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
  4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:
    - (a) Served at a noncommercial social event such as a potluck.
    - (b) Prepared at a cooking school that is conducted in an owner-occupied home.
    - (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
    - (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
    - (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
    - (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

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- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.
5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.
6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.
7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.
8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of

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

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.
10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.
11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.
12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.
13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.
14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".
- J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.
- K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or

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instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

- L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
- M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.
- N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.
- O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.
- P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.
- Q. For the purposes of this section:
  - 1. "Cottage food product":
    - (a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.
    - (b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.
  - 2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

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**Chapter 17**

**HEARING AID DISPENSERS,  
AUDIOLOGISTS AND  
SPEECH-LANGUAGE  
PATHOLOGISTS**

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### 36-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Accredited program" means a program leading to the award of a degree in audiology that is accredited by an organization recognized for that purpose by the United States department of education.
2. "Approved training program" means a postsecondary speech-language pathology assistant training program that is approved by the director.
3. "Assistive listening device or system" means an amplification system that is specifically designed to improve the signal-to-noise ratio for the listener who is hearing impaired, reduce interference from noise in the background and enhance hearing levels at a distance by picking up sound from as close to the source as possible and sending it directly to the ear of the listener, excluding hearing aids.
4. "Audiologist" means a person who engages in the practice of audiology and who meets the requirements prescribed in this chapter.
5. "Audiology" means the nonmedical and nonsurgical application of principles, methods and procedures of measurement, testing, evaluation and prediction that are related to hearing, its disorders and related communication impairments for the purpose of nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.
6. "Clinical interaction" means a fieldwork practicum in speech-language pathology that is supervised by a licensed speech-language pathologist.
7. "Department" means the department of health services.
8. "Direct supervision" means the on-site, in-view observation and guidance of a speech-language pathology assistant by a licensed speech-language pathologist while the speech-language pathology assistant performs an assigned clinical activity.
9. "Director" means the director of the department.
10. "Disorders of communication" means an organic or nonorganic condition that impedes the normal process of human communication and includes disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition and communications and oral, pharyngeal and laryngeal sensorimotor competencies.
11. "Disorders of hearing" means an organic or nonorganic condition, whether peripheral or central, that impedes the normal process of human communication and includes disorders of auditory sensitivity, acuity, function or processing.
12. "Hearing aid" means any wearable instrument or device designed for or represented as aiding or improving human hearing or as aiding, improving or compensating for defective human hearing, and any parts, attachments or accessories of the instrument or device, including ear molds, but excluding batteries and cords.
13. "Hearing aid dispenser" means any person who engages in the practice of fitting and dispensing hearing aids.
14. "Indirect supervision" means supervisory activities, other than direct supervision that are performed by a licensed speech-language pathologist and that may include consultation, record review and review and evaluation of audiotaped or videotaped sessions.
15. "Letter of concern" means an advisory letter to notify a licensee that, while there is insufficient evidence to support disciplinary action, the director believes the

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licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the director may result in action against the licensee.

16. "License" means a license issued by the director under this chapter and includes a temporary license.
17. "Nonmedical diagnosing" means the art or act of identifying a communication disorder from its signs and symptoms. Nonmedical diagnosing does not include diagnosing a medical disease.
18. "Practice of audiology" means:
  - (a) Rendering or offering to render to a person or persons who have or who are suspected of having disorders of hearing any service in audiology including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.
  - (b) Participating in hearing conservation, hearing aid and assistive listening device evaluation and hearing aid prescription preparation, fitting, dispensing and orientation.
  - (c) Screening, identifying, assessing, nonmedical diagnosing, preventing and rehabilitating peripheral and central auditory system dysfunctions.
  - (d) Providing and interpreting behavioral and physiological measurements of auditory and vestibular functions.
  - (e) Selecting, fitting and dispensing assistive listening and alerting devices and other systems and providing training in their use.
  - (f) Providing aural rehabilitation and related counseling services to hearing impaired persons and their families.
  - (g) Screening speech-language and other factors that affect communication function in order to conduct an audiologic evaluation and an initial identification of persons with other communications disorders and making the appropriate referral.
  - (h) Planning, directing, conducting or supervising services.
19. "Practice of fitting and dispensing hearing aids" means the measurement of human hearing by means of an audiometer or by any other means, solely for the purpose of making selections or adaptations of hearing aids, and the fitting, sale and servicing of hearing aids, including assistive listening devices and the making of impressions for ear molds and includes identification, instruction, consultation, rehabilitation and hearing conservation as these relate only to hearing aids and related devices and, at the request of a physician or another licensed health care professional, the making of audiograms for the professional's use in consultation with the hearing impaired. The practice of fitting and dispensing hearing aids does not include formal auditory training programs, lip reading and speech conservation.
20. "Practice of speech-language pathology" means:
  - (a) Rendering or offering to render to an individual or groups of individuals who have or are suspected of having disorders of communication service in speech language pathology including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.
  - (b) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of speech and language.
  - (c) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of oral-pharyngeal functions and related disorders.

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- (d) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating cognitive and communication disorders.
  - (e) Assessing, selecting and developing augmentative and alternative communication systems and providing training in the use of these systems and assistive listening devices.
  - (f) Providing aural rehabilitation and related counseling services to hearing impaired persons and their families.
  - (g) Enhancing speech-language proficiency and communication effectiveness.
  - (h) Screening hearing and other factors for speech-language evaluation and initially identifying persons with other communication disorders and making the appropriate referral.
21. "Regular license" means each type of license issued by the director, except a temporary license.
22. "Sell" or "sale" means a transfer of title or of the right to use by lease, bailment or any other contract, but does not include transfers at wholesale to distributors or dealers.
23. "Speech-language pathology" means the nonmedical and nonsurgical application of principles, methods and procedures of assessment, testing, evaluation and prediction related to speech and language and its disorders and related communication impairments for the nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.
24. "Speech-language pathology assistant" means a person who provides services prescribed in section 36-1940.04 and under the direction and supervision of a speech-language pathologist licensed pursuant to this chapter.
25. "Sponsor" means a person who is licensed pursuant to this chapter and who agrees to train or directly supervise a temporary licensee in the same field of practice.
26. "Temporary licensee" means a person who is licensed under this chapter for a specified period of time under the sponsorship of a person licensed pursuant to this chapter.
27. "Unprofessional conduct" means:
- (a) Obtaining any fee or making any sale by fraud or misrepresentation.
  - (b) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this chapter.
  - (c) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or other representation, however disseminated or published, that is misleading, deceiving, improbable or untruthful.
  - (d) Advertising for sale a particular model, type or kind of product when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type or kind if the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than that advertised.
  - (e) Representing that the professional services or advice of a physician will be used or made available in the selling, fitting, adjustment, maintenance or repair of hearing aids if this is not true, or using the words "doctor", "clinic", "clinical" or like words, abbreviations or symbols while failing to affix the word, term or initials

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"audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or

" Sc.D .<sup>11</sup>.

- (f) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts or questionable credit standing or by other false representations, or falsely disparaging the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies or services.
- (g) Displaying competitive products in the licensee's show window, shop or advertising in such manner as to falsely disparage such products.
- (h) Representing falsely that competitors are unreliable.
- (i) Quoting prices of competitive products without disclosing that they are not the current prices, or showing, demonstrating or representing competitive models as being current models when they are not current models.
- (j) Imitating or simulating the trademarks, trade names, brands or labels of competitors with the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers.
- (k) Using in the licensee's advertising the name, model name or trademark of a particular manufacturer of hearing aids in such a manner as to imply a relationship with the manufacturer that does not exist, or otherwise to mislead or deceive purchasers or prospective purchasers.
- (l) Using any trade name, corporate name, trademark or other trade designation that has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature or origin of any product of the industry, or of any material used in the product, or that is false, deceptive or misleading in any other material respect.
- (m) Obtaining information concerning the business of a competitor by bribery of an employee or agent of that competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means.
- (n) Giving directly or indirectly, offering to give, or permitting or causing to be given money or anything of value, except miscellaneous advertising items of nominal value, to any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence persons to refrain from dealing in the products of competitors.
- (o) Sharing any profits or sharing any percentage of a licensee's income with any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or to dissuade persons from dealing in products of competitors.
- (p) Failing to comply with existing federal regulations regarding the fitting and dispensing of a hearing aid.
- (q) Conviction of a felony or a misdemeanor that involves moral turpitude.
- (r) Fraudulently obtaining or attempting to obtain a license or a temporary license for the applicant, the licensee or another person.
- (s) Aiding or abetting unlicensed practice.
- (t) Wilfully making or filing a false audiology, speech-language pathology or hearing aid dispenser evaluation.

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- (u) The use of narcotics, alcohol or drugs to the extent that the performance of professional duties is impaired.
- (v) Betraying a professional confidence.
- (w) Any conduct, practice or condition that impairs the ability of the licensee to safely and competently engage in the practice of audiology, speech-language pathology or hearing aid dispensing.
- (x) Providing services or promoting the sale of devices, appliances or products to a person who cannot reasonably be expected to benefit from these services, devices, appliances or products.
- (y) Being disciplined by a licensing or disciplinary authority of any state, territory or district of this country for an act that is grounds for disciplinary action under this chapter.
- (z) Violating any provision of this chapter or failing to comply with rules adopted pursuant to this chapter.
- (aa) Failing to refer an individual for medical evaluation if a condition exists that is amenable to surgical or medical intervention prescribed by the advisory committee and consistent with federal regulations.
- (bb) Practicing **in** a field or area within that licensee's defined scope of practice **in** which the licensee has not either been tested, taken a course leading to a degree, received supervised training, taken a continuing education course or had adequate prior experience.
- (cc) Failing to affix the word, term or initials "audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or "Sc.D." in any sign, written communication or advertising media in which the term "doctor" or the abbreviation "Dr." is used in relation to the audiologist holding a doctoral degree.

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### 36-1902. Powers and duties of the director; advisory committee; examining committee

#### A. The director shall:

1. Appoint an advisory committee to collaborate with and assist the director and to perform duties as prescribed by this chapter. The director shall inform the advisory committee regarding all disciplinary actions.
2. Supervise and administer qualifying examinations to test the knowledge and proficiency of applicants for a hearing aid dispenser's license.
3. Designate the time and place for holding examinations for a hearing aid dispenser's license.
4. License persons who apply for and pass the examination for a license, and possess all other qualifications required for the practice of fitting and dispensing hearing aids, the practice of audiology and the practice of speech-language pathology.
5. License persons who apply for a license and possess all other qualifications required for licensure as a speech-language pathology assistant.
6. Authorize all disbursements necessary to carry out this chapter.
7. Ensure the public's health and safety by adopting and enforcing qualification standards for licensees and applicants for licensure under this chapter.

#### B. The director may:

1. Purchase and maintain, or rent, equipment and facilities necessary to carry out the examination of applicants for a license.
2. Issue and renew a license.
3. Deny, suspend, revoke or refuse renewal of a license or file a letter of concern, issue a decree of censure, prescribe probation, impose a civil penalty or restrict or limit the practice of a licensee pursuant to this chapter.
4. Appoint an examining committee to assist in the conduct of the examination of applicants for a hearing aid dispenser's license.
5. Make and publish rules that are not inconsistent with the laws of this state and that are necessary to carry out this chapter.
6. Require the periodic inspection of testing equipment and facilities of persons engaging in the practice of fitting and dispensing hearing aids, audiology and speech-language pathology.
7. Require a licensee to produce customer records of patients involved in complaints on file with the department.

C. The advisory committee appointed pursuant to subsection A, paragraph 1 consists of the director, two physicians licensed under title 32, chapter 13 or 17, one of whom is a specialist in otolaryngology, two licensed audiologists, one of whom dispenses hearing aids, two licensed speech-language pathologists, two public members, one of whom is hearing impaired, one member of the Arizona commission for the deaf and the hard of hearing who is not licensed pursuant to this chapter and two licensed hearing aid dispensers who are not licensed to practice audiology. Committee members who are licensed under this chapter shall have at least five years' experience immediately preceding the appointment in their field of practice in this state.

D. The examining committee authorized pursuant to subsection B, paragraph 4 consists of one otolaryngologist, two licensed dispensing audiologists and two licensed hearing aid dispensers. Committee members who are licensed under this

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chapter shall have at least five years' experience immediately preceding the appointment in their field of practice in this state. The findings of the examining committee shall be advisory to the director.

E. The director shall verify that the audiology licensee has passed a nationally recognized examination approved by the director.

F. The director shall verify that the speech-language pathology licensee has passed a nationally recognized examination approved by the director.

G. The director may recognize a nationally recognized speech-language hearing association or audiology association examination, or both, as an approved examination.

H. The advisory committee shall provide recommendations to the director in the following areas, on which the director shall act within a reasonable period of time:

1. Issuance and renewal of a license.
2. Prescribing disciplinary procedures.
3. Appointment of an examining committee to assist in the conduct of the examination of applicants for a hearing aid dispenser's license.
4. Adopting rules that are not inconsistent with the laws of this state and that are necessary to carry out this chapter.
5. Requiring the periodic inspection of testing equipment and facilities of persons engaging in the practice of fitting and dispensing hearing aids, audiology and speech-language pathology.
6. Requiring a licensee to produce customer records of patients involved in complaints on file with the department of health services.

### 36-1903. Deposit of monies

The director shall deposit pursuant to sections 35-146 and 35-147, ten per cent of all monies collected pursuant to this chapter in the state general fund and shall deposit the remaining ninety per cent in the health services licensing fund established by section 36-414, except that monies collected from civil penalties imposed pursuant to this chapter shall be deposited in the state general fund .

### 36-1904. Issuance of license; renewal of license; continuing education; military members

A. The director shall issue a regular license to each applicant who meets the requirements of this chapter. A regular license is valid for two years.

B. A licensee shall renew a regular license every two years on payment of the renewal fee prescribed in section 36-1908 . There is a thirty-day grace period after the expiration of a regular license. During this period the licensee may renew a regular license on payment of a late fee in addition to the-renewal fee.

C. When renewing a regular license as a hearing aid dispenser, the licensee shall provide proof of having completed at least twenty-four hours of continuing education within the prior twenty-four months. Courses sponsored by a single manufacturer of hearing aids may not satisfy more than eight hours of continuing

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education within the prior twenty-four months. At least eight hours of continuing education must be from courses taught in person that offer a hands-on opportunity for instruction in dispensing-related techniques. Courses on topics that provide a hearing aid dispenser an opportunity to stay current on business or client service practices or trends in the profession or that contribute to the professional or business competence of a hearing aid dispenser may qualify for up to one-third of the continuing education requirement.

D. When renewing a regular license in audiology or in speech-language pathology, the licensee shall provide proof of having completed at least twenty hours of continuing education within the prior twenty-four months. Courses sponsored by a single manufacturer of hearing aids may not satisfy more than eight hours of continuing education within the prior twenty-four months for persons with a license in audiology.

E. The director by rule shall provide standards for continuing education courses required by this section. Educational courses that are developed by professional organizations of hearing aid dispensers, audiologists or speech language pathologists and that are used by those associations to comply with continuing education requirements are deemed to comply with department standards.

F. The director may refuse to renew a regular license for any cause provided in section 36-1934.

G. A person who does not renew a regular license as prescribed by this section shall apply for a new license pursuant to the requirements of this chapter. If an application is received by the director within one year after the expiration date of the license, the applicant is not required to take an examination.

H. A person who reapplies for a regular license issued pursuant to this chapter must provide proof of completion of the continuing education hours prescribed by subsection C or D of this section within the previous twenty-four months before the date of reapplication.

I. A license issued pursuant to this chapter to any member of the Arizona national guard or the United States armed forces reserves does not expire while the member is serving on federal active duty and is extended one hundred eighty days after the member returns from federal active duty if the member, or the legal representative of the member, notifies the director of the federal active duty status of the member. A license issued pursuant to this chapter to any member serving in the regular component of the United States armed forces is extended one hundred eighty days after the date of expiration if the member, or the legal representative of the member, notifies the director of the federal active duty status of the member. If the license is renewed during the applicable extended time period after the member returns from federal active duty, the member is responsible only for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as late fees or delinquency fees. The member, or the legal representative of the member, shall present to the director a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

J. A license issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces does not expire and is extended one hundred eighty

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days after the date the military member is able to perform activities necessary under the license if the member both:

1. Is released from active duty service.
2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license.

### 36-1905. Sponsors; duties

- A. A sponsor shall directly train and supervise a temporary licensee. The director shall prescribe by rule a reasonable number of hours of training and supervision required. A sponsor may not sponsor more than two temporary licensees at one time.
- B. A sponsor and the temporary licensee are equally liable for violations of this chapter and rules adopted pursuant to this chapter that are committed by the temporary licensee.
- C. A sponsor who violates this section is subject to disciplinary action as prescribed pursuant to section 36-1934.

### 36-1906. Registering place of business with director

- A. A person who holds a license shall notify the director in writing of the address of the place or places where the person engages in the practice of fitting and dispensing hearing aids, audiology or speech-language pathology and any change of address.
- B. The director shall keep a record of the places of practice of persons who hold licenses. Any notice required to be given by the director to a person who holds a license may be given by mailing it to that person at the address given by that person to the director.

### 36-1907. Practicing without a license; prohibition

- A. A person shall not engage in the practice of fitting and dispensing hearing aids, audiology or speech-language pathology or display a sign or in any other way advertise or claim to be a hearing aid dispenser, an audiologist or a speech language pathologist unless the person holds an active license in good standing issued by the director as provided in this chapter.
- B. A person shall not engage in performing the duties of a speech-language pathology assistant or claim to be a speech-language pathology assistant unless the person holds an active license in good standing issued by the director as provided by this chapter.
- C. A licensee shall conspicuously post a license issued pursuant to this chapter in the licensee's office or place of business.

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### 36-1908. Fees

The director shall prescribe and collect fees from persons who are regulated under this chapter for the following:

1. An original application for a regular or temporary license.
2. An original issuance of a regular or temporary license.
3. An original application for a regular or temporary license if an examination pursuant to section 36-1924 is required.
4. A renewal of a regular or temporary license.
5. An issuance of a duplicate regular or temporary license.
6. A late fee.

### 36-1909. Bill of sale: requirements

A. A hearing aid dispenser or dispensing audiologist shall deliver a bill of sale to each person supplied with a hearing aid by the hearing aid dispenser or the dispensing audiologist or at that person's order or direction.

B. A bill of sale shall contain the hearing aid dispenser's or the dispensing audiologist's signature and shall show the address of that person's regular place of practice and the number of that person's license, a description of the make and model of the hearing aid and the amount charged. The bill of sale shall also state the serial number and the condition of the hearing aid as to whether it is new, used or rebuilt.

C. A bill of sale shall contain language that verifies that the client has been informed about audio switch technology, including benefits such as increased access to telephones and assistive listening devices. If the hearing device purchased by the client has audio switch technology, the client shall be informed of the proper use of the technology. The client shall be informed that an audio switch is also referred to as a telecoil, t-coil or t-switch.

D. A bill of sale shall contain language that informs the client about the Arizona telecommunications equipment distribution program established by section 36-1947 that provides assistive telecommunications devices to residents of this state who have hearing loss.

### 36-1910. Application of chapter to corporations and other organizations: exemptions

A. Except as provided in subsection B of this section and to the extent practicable, this chapter applies to corporations, partnerships, trusts, associations or like organizations.

B. Corporations, partnerships, trusts, associations or like organizations that are fitting and dispensing hearing aids are exempt from the qualification and examination requirements of sections 36-1923 and 36-1924, provided they pay the license fee prescribed in section 36-1908 and employ only licensed persons in the over-the-counter or other in-person fitting and dispensing of hearing aids.

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36-1921. Persons not affected by chapter This chapter does not:

1. Apply to a person while engaged in the practice of recommending hearing aids if such practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public or charitable institution, or a nonprofit organization which is primarily supported by voluntary contributions unless they sell hearing aids.
2. Apply to any person engaging in the practice of measuring human hearing for the purpose of selection of hearing aids provided that the person or the organization that employs that person does not sell hearing aids or hearing aid accessories.
3. Prevent a health care professional who is licensed or certified under title 32 from acting within the scope of that person's license or certificate.
4. Apply to a person who is credentialed by this state as a teacher of the deaf from acting within the scope of those credentials.
5. Apply to a student, intern or trainee pursuing a course of study in audiology or speech-language pathology in a nationally or regionally accredited institution of higher education or training institution if all of the following are true:
  - (a) The activities are part of a planned course of study at that institution.
  - (b) The person is designated by a title that clearly indicates the status appropriate to the person's level of education.
  - (c) The person works under the supervision of a person who is licensed in this state as an audiologist or a speech-language pathologist.
  - (d) Before a person receives services from a student or a temporary licensee, the supervising licensee provides written notification of this fact to the patient.
6. Apply to any person certified by the department of health services for the school hearing screening program.

36-1922. Reciprocity

- A. The director may issue a license to a person who is currently licensed in another state or jurisdiction that the director determines meets the minimum licensure requirements of this chapter. The person shall apply for licensure and pay all applicable fees as prescribed by this chapter and shall pass an examination approved by the director in jurisprudence and ethics related to this chapter within six months after initial licensure. The director shall offer the examination at least four times each calendar year.
- B. The applicant shall provide information the director determines is necessary to investigate the status of the applicant's current license.

36-1923. Hearing aid dispensers; licensure; requirements

- A. An applicant for a hearing aid dispenser license shall pay to the director a nonrefundable application fee and shall show to the satisfaction of the director that the applicant:
  1. Is a person of good moral character.

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2. Has an education equivalent to a four-year course in an accredited high school or has continuously engaged in the practice of fitting and dispensing hearing aids during the three years preceding August 11, 1970.

3. Has not had the applicant's license revoked or suspended by a state within the past two years and is presently not ineligible for licensure in any state due to prior revocation or suspension.

B. An applicant for a hearing aid dispenser license who is notified by the director that the applicant has fulfilled the requirements of subsection A of this section shall appear to be examined by written and practical tests as designated by the director in order to demonstrate that the applicant is qualified to practice the fitting and dispensing of hearing aids.

C. The director shall give at least two and not exceeding four examinations of the type described in this section in each calendar year unless there is an insufficient number of applicants for the second annual examination.

### 36-1924. Examination for license

A. The examination provided for in this article shall consist of:

1. A demonstration of minimal knowledge in the techniques of testing hearing and fitting and evaluating hearing aids.

2. A knowledge of the medical and rehabilitation facilities, for children and adults with hearing disorders, in this state.

3. Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:

(a) Physics.

(b) The human hearing mechanism, including its functions and causes of its disorders.

(c) The function of hearing aids.

4. Practical tests of proficiency in the techniques of taking ear mold impressions and measurement of hearing by pure tone audiometry, including the air, bone and masking methods, and speech audiometry and other skills as they pertain to the candidacy for, selection of and adaptation of hearing aids.

5. A knowledge of rehabilitation and hearing conservation techniques as they relate only to hearing aids and related devices.

B. The examination shall not be constructed to require knowledge or abilities inconsistent with the realistic services of a hearing aid dispenser or with the requirements of sound public health practices.

C. To provide adequate tests of proficiency, the examination requirements provided in this section may be changed when deemed necessary due to technological advances.

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### 36-1926. Temporary license; sponsorship; termination of sponsorship

- A. An applicant who fulfills the requirements of section 36-1923, subsection A may apply to the director for a temporary license.
- B. On receiving an application as provided by subsection A of this section, accompanied by an application fee and proof of sponsorship, the director shall issue a temporary license. A temporary license allows the licensee to practice the fitting and dispensing of hearing aids for a twelve-month period.
- C. An applicant shall provide proof to the satisfaction of the director that the applicant is or will be supervised and trained for fitting and dispensing activities by a sponsor licensed pursuant to this chapter.
- D. A sponsor may terminate sponsorship at any time and for any reason. The director shall not review the reasons for the termination. A temporary license terminates on the date that the director receives notice from the sponsor that the sponsor is terminating sponsorship. This notice shall be accompanied by documentation that the sponsor has notified the licensee of the termination. The director shall prescribe by rule how the sponsor shall document this notification of termination. A person whose license is terminated shall apply for a new temporary license as prescribed by this section and shall not practice until granted a license.
- E. A temporary licensee shall take an examination within six months after issuance of a temporary license. If the person takes and fails the examination, the person may renew the temporary license once before the temporary license expires. The person shall take the next examination following the issuance of the renewal license.
- F. The director may revoke or suspend a temporary license in the same manner and for the same reasons as prescribed pursuant to section 36-1934.
- G. The director may deny an application for a temporary license if the applicant has previously held a temporary license and renewed the temporary license.

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### 36-1934. Denial, revocation or suspension of license; hearings; alternative sanctions

A. The director may deny, revoke or suspend a license issued under this chapter for any of the following reasons:

1. Conviction of a felony or misdemeanor involving moral turpitude. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or from the judge of that court is sufficient evidence of conviction.
2. Securing a license under this chapter through fraud or deceit.
3. Unprofessional conduct, or incompetence in the conduct of his practice.
4. Using a false name or alias in the practice of his profession.
5. Violating any of the provisions of this chapter.
6. Failing to comply with existing federal regulations regarding the fitting and dispensing of a hearing aid.

B. If the director determines pursuant to a hearing that grounds exist to revoke or suspend a license, the director may do so permanently or for a fixed period of time and may impose conditions as prescribed by rule.

C. The department may deny a license without holding a hearing. After receiving notification of the denial, the applicant may request a hearing to review the denial.

D. The department shall conduct any hearing to revoke or suspend a license or impose a civil penalty under section 36-1939 pursuant to title 41, chapter 6, article 10.

E. Instead of denying, revoking or suspending a license the director may file a letter of concern, issue a decree of censure, prescribe a period of probation or restrict or limit the practice of a licensee.

F. The director shall promptly notify a licensee's employer if the director initiates a disciplinary action against the licensee.

### 36-1936. Unlawful acts

A person may not:

1. Sell, barter, or offer to sell or barter, a license.
2. Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to engage in the practice of fitting and dispensing hearing aids.
3. Alter materially a license with fraudulent intent.
4. Use or attempt to use as a valid license one which has been purchased, fraudulently obtained, counterfeited or materially altered.
5. Wilfully make a false, material statement in an application or related document for a license or for renewal of a license.

### 36-1937. Injunctive relief

The director may enforce any provision of this chapter by injunction or by any other appropriate proceeding. No such proceeding shall be barred by any proceeding had or pending pursuant to any other provisions of this chapter, or by the imposition of any fine or term of imprisonment pursuant thereto.

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### 36-1938. Violation; classification

Violation of any provision of this chapter is a class 3 misdemeanor.

### 36-1939. Civil penalties: enforcement

A. The director may impose a civil penalty of not more than five hundred dollars for a violation of this chapter or a rule adopted pursuant to this chapter.

B. The attorney general and the county attorney may bring an action in the name of this state to enforce civil penalties imposed pursuant to this section. Actions shall be brought in the superior court in the county where the violation occurs.

C. The director may impose penalties assessed pursuant to this section in addition to other penalties imposed pursuant to this chapter.

D. All monies collected from civil penalties collected for violation of this chapter or a rule adopted pursuant to this chapter shall be deposited in the state general fund.

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### 36-1940. Audiology; licensure requirements

A. A person who wishes to be licensed as an audiologist shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.
2. Submit evidence satisfactory to the director that the applicant has:
  - (a) A doctoral degree with an emphasis in audiology from a nationally or regionally accredited college or university in an accredited program consistent with the standards of this state's universities.
  - (b) Completed supervised clinical rotations in audiology from a nationally or regionally accredited college or university in an accredited program consistent with the standards of this state's universities.
3. Pass an examination pursuant to section 36-1902, subsection G. The applicant must have completed the examination within three years before the date of application for licensure pursuant to this article.
4. Be of good moral character.
5. Not have had a license revoked or suspended by a state within the past two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.

B. A person who has a doctoral degree in audiology and who wishes to be licensed as an audiologist to fit and dispense hearing aids shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.
2. Submit evidence satisfactory to the director that the applicant has:
  - (a) A doctoral degree with an emphasis in audiology from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.
  - (b) Completed supervised clinical rotations in audiology from a nationally or regionally accredited college or a university in an accredited program that is consistent with the standards of this state's universities.
3. Pass an examination pursuant to section 36-1902, subsection G. The applicant must have completed the examination within three years before the date of application for licensure pursuant to this article.
4. Pass an examination approved by the director in jurisprudence and ethics related to this chapter within six months after initial licensure. The director shall offer the examination at least four times each calendar year.
5. Be of good moral character.
6. Not have had a license revoked or suspended by a state within the past two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.

C. A person who wishes to be licensed as an audiologist to fit and dispense hearing aids and who was awarded a master's degree in audiology before December 31, 2007 must:

1. Submit a nonrefundable application fee as prescribed pursuant to section 36-1908.
2. Submit evidence satisfactory to the director that the applicant meets the requirements prescribed in section 36-1940.02, subsection C for a waiver of the educational and clinical rotation requirements of this article.
3. Pass an audiology examination pursuant to section 36-1902, subsection E. The applicant must have completed the examination within three years before the date of

## ATTACHMENT B - STATUTORY AUTHORITIES

application for licensure pursuant to this article unless the applicant is currently

## ATTACHMENT B - STATUTORY AUTHORITIES

practicing audiology and meets the audiology examination waiver requirements of section 36-1940.02, subsection D.

4. Pass the hearing aid dispenser's examination pursuant to section 36-1924.
  5. Be of good moral character.
  6. Not have had a license to practice as an audiologist or hearing aid dispenser revoked or suspended by another state within the past two years and not currently be ineligible for licensure in any state because of a prior revocation or suspension.
- D. The director shall adopt rules prescribing criteria for approved postgraduate professional experience.

### 36-1940.01. Speech-language pathologist: licensure requirements

- A. A person who wishes to be licensed as a speech-language pathologist shall:
1. Submit a nonrefundable application fee as prescribed by section 36-1908.
  2. Submit evidence satisfactory to the director that the applicant has:
    - (a) A master's degree in speech-language pathology or the equivalent from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.
    - (b) Completed a supervised clinical practicum in speech-language pathology from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.
    - (c) Completed postgraduate professional experience in the field of speech-language pathology approved by the director.
  3. Pass an examination pursuant to section 36-1902, subsection G.
  4. Be of good moral character.
  5. Not have had a license revoked or suspended by a state within the past two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.
- B. A person who wishes to be licensed as a speech-language pathologist whose practice is limited to providing services to pupils under the authority of a local education agency or state supported institution shall:
1. Submit a nonrefundable application fee as provided by section 36-1908.
  2. Submit proof of an employee or contractor relationship with a local education agency or a state supported institution.
  3. Hold a certificate in speech and language therapy awarded by the state board of education.
- C. The director shall adopt rules prescribing criteria for approved postgraduate professional experience.

### 36-1940.02. Waiver of licensure and examination requirements

- A. The advisory committee appointed under section 36-1902 may recommend to the director a waiver of the educational requirements of sections 36-1940 and 36-1940.01 if an applicant submits proof satisfactory to the department that the applicant received professional education in another country equivalent to the education and practicum

## ATTACHMENT B - STATUTORY AUTHORITIES

requirements of this article.

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B. The department shall waive the examination requirements of section 36-1940.01 under either of the following conditions:

1. The applicant presents proof satisfactory to the department that the applicant is currently licensed in a state, district or territory of this country that has standards that are at least equivalent to those of this state.
2. The applicant holds a certificate of clinical competence in speech-language pathology from a nationally recognized speech-language hearing association approved by the department in the field for which the applicant is applying for licensure.

C. The department shall waive the education and clinical rotation requirements of section 36-1940 if an applicant submits proof satisfactory to the director that the applicant either:

1. Is currently licensed in a state that has standards that are at least equivalent to those of this state.
2. Has a master's degree in audiology that was awarded by an accredited program before December 31, 2007 and has completed postgraduate professional experience in audiology as approved by the director.

D. The department shall waive the audiology examination requirements of section 36-1940 if either:

1. The applicant presents proof satisfactory to the department that the applicant is currently licensed and practicing audiology in this state or in another state that has standards that are at least equivalent to those of this state.
2. The applicant presents proof satisfactory to the department that the applicant is currently practicing audiology under the authority and supervision of an agency of the United States government or of another board, agency or department of another state and holds a certificate in audiology from a recognized credentialing body approved by the director.

E. The department shall waive the hearing aid dispensing examination requirements of section 36-1940 if:

1. The applicant presents proof satisfactory to the department that the applicant holds a current license that includes dispensing and that is issued by another state that has standards that are at least equivalent to those of this state.
2. The applicant passes an examination approved by the director in jurisprudence and ethics related to this chapter within six months after initial licensure. The director shall offer the examination at least four times each calendar year.

### 36-1940.03. Temporary licenses

A. The department shall issue a temporary license to a person who does not meet the professional experience requirement of section 36-1940.01 if the applicant meets the other requirements of that section and:

1. Includes with the application a plan for meeting the postgraduate professional experience.
2. Submits a fee prescribed by section 36-1908.

B. A person may renew a temporary license only once.

C. A person issued a temporary license shall practice only under the supervision of a person who is fully licensed by this state.

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### 36-1940.04. Speech-language pathologist assistant: licensure requirements: scope of practice; supervision

A. A person who wishes to be licensed as a speech-language pathologist assistant shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.
2. Submit written evidence satisfactory to the director that the applicant has completed:
  - (a) An approved training program for speech-language pathology assistants or the equivalent from a nationally or regionally accredited college or university that consisted of a minimum of sixty semester credit hours of course work with the following curriculum content:
    - (i) Twenty to forty semester credit hours of general education.
    - (ii) Twenty to forty semester credit hours of speech-language pathology technical course work.
  - (b) A minimum of one hundred hours of clinical interaction that does not include observation, under the supervision of a licensed master's level speech-language pathologist.
3. Be of good moral character.
4. Not have had a license revoked or suspended by a state within the past two years and is not presently ineligible for licensure in any state because of a prior revocation or suspension.

B. The director shall grant a waiver of the requirements for licensure as provided by subsection A of this section until September 1, 2007 to individuals who have performed the functions of a speech-language pathology assistant if the individual:

1. Has completed a minimum of forty semester credit hours of speech-language pathology technical course work.
2. Has satisfactorily completed a minimum of two years of experience as a speech language pathology assistant under the supervision of a licensed master's level speech-language pathologist.
3. Is of good moral character.
4. Has not had a license revoked or suspended by a state within the past two years and is not presently ineligible for licensure in any state because of a prior revocation or suspension.

C. A speech-language pathology assistant may do the following under the supervision of the licensed speech-language pathologist:

1. Conduct speech and language screenings without interpretation, using screening protocols specified by the supervising speech-language pathologist.
2. Provide direct treatment assistance, including feeding for nutritional purposes to patients, clients or students except for patients, clients or students with dysphagia, identified by the supervising speech-language pathologist by following written treatment plans, individualized education programs, individual support plans or protocols developed by the supervising speech-language pathologist.
3. Document patient, client or student progress toward meeting established objectives as stated in the treatment plan, individual support plan or individualized education program without interpretation of the findings, and report this information to the supervising speech-language pathologist.
4. Assist the speech-language pathologist in the collecting and tallying of data for assessment purposes, without interpretation of the data.

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5. Act as a second-language interpreter during assessments.
6. Assist with informal documentation during an intervention session by collecting and tallying data as directed by the speech-language pathologist, preparing materials and assisting with other clerical duties as specified by the supervising speech-language pathologist.
7. Schedule activities and prepare charts, records, graphs or other displays of data.
8. Perform checks and maintenance of equipment.
9. Participate with the speech-language pathologist in research projects, in-service training and public relations programs.
10. Sign and initial treatment notes for review and co-signature by the supervising speech-language pathologist.

D. A speech-language pathology assistant shall not:

1. Conduct swallowing screening, assessment and intervention protocols, including modified barium swallow studies.
2. Administer standardized or nonstandardized diagnostic tests, formal or informal evaluations or interpret test results.
3. Participate in parent conferences, case conferences or any interdisciplinary team meeting without the presence of the supervising speech-language pathologist, except for individualized education program or individual support plan meetings if the licensed speech pathologist has been excused by the individualized education program team or the individual support plan team.
4. Write, develop or modify a patient's, client's or student's treatment plan, individual support plan or individualized education program in any way.
5. Provide intervention for patients, clients or students without following the treatment plan, individual support plan or individualized education program prepared by the supervising speech-language pathologist.
6. Sign any formal documents, including treatment plans, individual support plans, individualized education programs, reimbursement forms or reports.
7. Select patients, clients or students for services.
8. Discharge patients, clients or students from services.
9. Unless required by law, disclose clinical or confidential information orally or in writing to anyone not designated by the speech-language pathologist.
10. Make a referral for any additional service.
11. Communicate with the patient, client or student or with family or others regarding any aspect of the patient, client or student status without the specific consent of the supervising speech-language pathologist.
12. Claim to be a speech-language pathologist.
13. Write a formal screening, diagnostic, progress or discharge note.
14. Perform any task without the express knowledge and approval of the supervising speech-language pathologist.

E. All services provided by a speech-language pathology assistant shall be performed under the direction and supervision of a speech-language pathologist licensed pursuant to this chapter.

F. A licensed speech-language pathologist who supervises or directs the services provided by a speech-language pathology assistant shall:

1. Have at least two years of full-time professional experience as a licensed speech language pathologist.

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2. Provide direction and supervision to not more than two full-time or three part time speech-language pathology assistants at one time.
  3. Ensure that the amount and type of supervision and direction provided to a speech-language pathology assistant is consistent with the individual's skills and experience, the needs of the patient, client or student served, the setting in which services are provided and the tasks assigned and provide:
    - (a) A minimum of twenty per cent direct supervision and ten per cent indirect supervision of all of the time that a speech-language pathology assistant is providing services during the first ninety days of the person's employment.
    - (b) Subsequent to the first ninety days of a speech-language pathology assistant's employment, a minimum of ten per cent direct supervision and ten per cent indirect supervision of all of the time a speech-language pathologist assistant is providing service.
  4. Inform a patient, client or student when the services of a speech-language pathology assistant are being provided.
  5. Document all periods of direct and indirect supervision provided to a speech language pathology assistant.
- G. If more than one speech-language pathologist provides supervision to a speech language pathology assistant, one of the speech-language pathologists shall be designated as the primary supervisor who is responsible for coordinating any supervision provided by other speech-language pathologists.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 16, Article 3, Licensing Hearing Aid Dispensers



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** July 2, 2019

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

**FROM:** Council Staff

**DATE:** May 30, 2019

**SUBJECT:** ARIZONA DEPARTMENT OF HEALTH SERVICES  
Title 9, Chapter 16, Article 3, Licensing Hearing Aid Dispensers

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This five year review report (5YRR) from the Arizona Department of Health Services ("Department") relates to all Sections of Title 9, Chapter 16, Article 3 related to the licensing of hearing aid dispensers.

The last 5YRR for Article 3 was due in May 2016. However, the rules in Article 3 were substantially revised in 2014 through exempt rulemaking pursuant to Laws 2013, Ch. 33 requiring the Department to extend licensure from one year to two years, make conforming changes to renewal and continuing education requirements, and reduce the regulatory burden on hearing aid dispensers. In September 2014, the Department requested the Council reschedule the May 2016 5YRR due to the substantial revisions pursuant to Laws 2013, Ch. 33. On September 12, 2014, the Council granted the Departments request for rescheduling and the 5YRR due date was changed to May 2019. This is the first 5YRR for Article 3 since the rules were substantially revised in 2014.

### **Proposed Action**

The Department plans to amend the rules in Article 3 to address issues identified in the 5YRR and outlined below with expedited rulemakings. The Department intends to submit a Notice of Final Expedited Rulemaking to the Council by December 2019.

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

Yes. The Department cites to both general and specific statutory authority for the rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Article 3 rules were substantially revised through the exempt rulemaking process in 2014, so there is no economic, small business, and consumer impact statement available. Article 3 establishes rules for the licensing of hearing aid dispensers in Arizona. As of March 2019, the Department has licensed 285 hearing aid dispensers and 123 business organizations licensed as hearing aid dispensers.

The stakeholders include the Department, hearing aid dispensers, customers, and the general public.

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

The Department has determined that the rules provide the least intrusive and least costly method of achieving the regulatory objective. The Department states that the benefits of having effective and understandable rules outweigh the costs. The Department has identified numerous nonsubstantive issues with these rules, and it plans to submit an expedited rulemaking to the Council by December 2019.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department has not received any written criticism of the rules within the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the rules are mostly clear, concise, and understandable but could be more clear, concise, and understandable with modifications to all rules in Article 3 as outlined in more detail in the Department's 5YRR.

The Department indicates that the rules are mostly consistent with other rules and statutes except as outlined below:

- **R9-16-304:** The rule would be consistent with Articles 2 and 5 in this Chapter if the rule included requirements for an applicant to provide documentation if the applicant has had a license revoked or suspended in another state or is currently ineligible for licensure in another state.

- **R9-16-308 & R9-16-311:** The rules would be consistent with Articles 2 and 5 in this Chapter if the rules included requirements for a business organization to provide documentation if the business organization has had a license revoked or suspended in another state or is currently ineligible for licensure in another state.

The Department indicates that the rules are somewhat effective in achieving their objective. Specifically the Department indicates that the rules could be improved to increase understandability by simplifying and clarifying some requirements, updating antiquated language and outdated citations and references, and making technical and grammatical changes as outlined in more detail in paragraphs 4 and 6 of the Department's 5YRR. The Department also indicates the rules could be improved by combining and streamlining Sections for examinations and applications. The Department indicates the rules could also be improved by making the rules consistent with other rules in Articles 2 and 5 as outlined above, without increasing costs or burdens to affected persons.

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

The Department indicates that the rules are enforced as written.

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

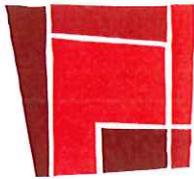
The Department indicates that the rules are not more stringent than corresponding federal law. Specifically, the Department indicates that federal laws are not applicable to the rules in Article 3.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department, pursuant to A.R.S. § 36-1902(A), is authorized to license persons who apply for a license and possess all other qualifications required for licensure as a hearing aid dispenser. Therefore, the Department complies with A.R.S. § 41-1037(A) which states an agency may issue an alternative type of permit, license, or authorization "specifically authorized by state statute" or issuance of a general permit "would not meet the applicable statutory requirements." A general permit is not applicable.

**9. Conclusion**

While the rules are mostly clear, concise, understandable, consistent, and generally effective, the Department has indicated numerous ways they can be improved as outlined above and in the Department's 5YRR. The Department intends to amend the rules in Article 3 to address these issues with expedited rulemakings. The Department intends to submit a Notice of Final Expedited Rulemaking to the Council by December 2019. Council staff recommends approval of this report.



ARIZONA DEPARTMENT  
OF HEALTH SERVICES  
POLICY & INTERGOVERNMENTAL AFFAIRS

April 17, 2019

Connie Wilhelm, Vice-Chair  
Arizona Department of Administration  
100 N. 15<sup>th</sup> Avenue, Suite 305  
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 16, Article 3 Licensing Hearing Aid Dispensers

Dear Ms. Wilhelm:

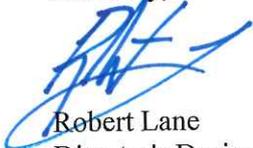
According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 16, Article 3 is due to the Council no later than May 31, 2019. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 16, Article 3 and is enclosing a report to the Council for this rule.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. The report contains a summary of the Department's review for all the rules and is in the format of the Council's report template. Included in the package are the rules reviewed and the general and specific authorities. As described in the report, the Department plans to amend the rules in 9 A.A.C. 16, Article 3 to address the matters identified in this report and submit a Notice of Final Expedited Rulemaking to Governor's Regulatory Review Council by December 31, 2019.

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

If you need any further information regarding this five-year-review report, please contact Teresa Koehler at [Teresa.Koehler@azdhs.gov](mailto:Teresa.Koehler@azdhs.gov).

Sincerely,



Robert Lane  
Director's Designee

RL:tk  
Enclosures

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

**Arizona Department of Health Services**

**Five-Year-Review Report**

**Title 9. Health Services**

**Chapter 16. Department of Health Services – Occupational Licensing**

**Article 3. Licensing Hearing Aid Dispensers**

**May 2019**

**1. Authorization of the rule by existing statutes**

Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A)(18), and 36-136(G)

Implementing statutes: A.R.S. §§ 36-1901 through 36-1910; 36-1921 through 36-1926; and 36-1934 through 36-1940.02

**2. The objective of each rule:**

Rule	Objective
R9-16-301	The objective of the rule is to define the terms used in Article 3 so the requirements are clear and are interpreted consistently.
R9-16-302	The objective of the rule is to specify who may act on behalf of an applicant or a hearing aid dispenser.
R9-16-303	The objective of the rule is to specify the requirements for a hearing aid dispenser examination, practical examination, and notification to an applicant that the applicant may submit an initial application for hearing aid dispenser licensure.
R9-16-304	The objective of the rule is to specify the requirements for applying for approval to take a hearing aid dispenser examination and written notice to an applicant of their examination results.
R9-16-305	The objective of the rule is to specify when the Department administers the practical examination and provides written notice to an applicant of their examination results.
R9-16-306	The objective of the rule is to specify the requirements for submitting an initial application for an individual to obtain licensure as a hearing aid dispenser.
R9-16-307	The objective of the rule is to specify the requirements for submitting an initial application for an individual to obtain licensure as a hearing aid dispenser by reciprocity.
R9-16-308	The objective of the rule is to specify the requirements for submitting an initial application for a business organization to obtain licensure as a hearing aid dispenser.
R9-16-309	The objective of the rule is to specify the requirements for submitting an application for a

	temporary hearing aid dispenser license.
R9-16-310	The objective of the rule is to specify the requirements for an individual who is licensed, pursuant to A.R.S. Title 36, Chapter 17, and agrees to train, supervise, and be responsible for a temporary licensed hearing aid dispenser's practice.
R9-16-311	The objective of the rule is to specify the requirements for submitting a renewal application packet for licensure as a hearing aid dispenser.
R9-16-312	The objective of the rule is to specify continuing education requirements.
R9-16-313	The objective of the rule is to specify the responsibilities and requirements a licensed hearing aid dispenser shall adhere to.
R9-16-314	The objective of the rule is to provide requirements for maintaining hearing screening equipment and client records.
R9-16-315	The objective of the rule is to specify the types of disciplinary actions and the criteria the Department will consider when determining disciplinary actions.
R9-16-316	The objective of the rule is to specify the Department practice used when approving hearing aid dispenser examinations, initial and temporary applications, and renewal applications.
Table 3.1	The objective of the table is to specify time-frame durations used by the Department when reviewing examination applications, initial applications, and renewal applications.
R9-16-317	The objective of the rule is to provide a licensee with a method for: notifying the Department of a change that affects a license and requesting a duplicate license.

3. **Are the rules effective in achieving their objectives?** Yes \_\_\_ No √

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

Rule	Explanation
R9-16-301 through R9-16-317	The rules are somewhat effective; and as identified in paragraphs 4 and 6, the rules could be improved to increase understandability of the rules by simplifying and clarifying some requirements, updating antiquated language and outdated citations and references, and making technical and grammatical changes. The rules could be improved by combining and streamlining Sections for examinations and applications. The rules could also be improved by making the rules consistent with other rules and statutes in A.R.S. Title 36,

	Chapter 17 without increasing costs or burdens to affected persons.
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4. **Are the rules consistent with other rules and statutes?** Yes  No

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation
R9-16-304	The rule would be consistent with Articles 2 and 5 in this Chapter if the rule included requirements for an applicant to provide documentation if the applicant has had a license revoked or suspended in another state or is currently ineligible for licensure in another state.
R9-16-308	The rule would be consistent with Articles 2 and 5 in this Chapter if the rule included requirements for a business organization to provide documentation if the business organization has had a license revoked or suspended in another state or is currently ineligible for licensure in another state.
R9-16-311	The rule would be consistent with Articles 2 and 5 in this Chapter if the rule included requirements for a business organization to provide documentation if the business organization has had a license revoked or suspended in another state or is currently ineligible for licensure in another state.

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

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

Rule	Explanation

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

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation
R9-16-301	The rule would be more understandable if definitions (1) and (2) were combined since the definition "application packet" is not used in other Sections or if definition "application packet" were used in all application Sections (R9-16-304, R9-16-306, R9-16-307, R9-16-308, R9-16-309, and R9-16-310). The definition "controlling person" should be removed and clarified in R9-16-302 as it is related to a "designated agent." Additionally, the use of

	<p>“Department-designated written hearing aid dispenser examination” is awkward and overused in the Article to the point of being burdensome to readers; the use of “hearing aid dispenser examination” or “HAD examination” is more suitable. Also, the definition “Disciplinary action” includes “a state licensing entity;” the rule would be clearer if “a state licensing entity” were defined. And definition (12) “in-service education” should be removed since the definition not used in the Article. The Article would also be clearer if other definitions were added, such as “practical examination.”</p>
R9-16-302	<p>This rule is not concise or needed. In subsection (1), the requirement to clarify that an applicant, who is an individual that may act on their own behalf, is not necessary. It is also confusing to add (additional) criteria for a “designated agent” that is already defined in R9-16-301. This rule should be repealed and parts of subsection (2) added to R9-16-301(10) to specify citizenship, legal resident, and Arizona address.</p>
R9-16-303	<p>The rule would be clearer if in subsection (A), the reference to R9-16-304(C)(1) were not specified since subsection R9-16-304 (C)(1) does not given an applicant approval to take a hearing aid dispenser examination, rather provides applicant’s examination results. Subsection (A) should also clarify that a hearing aid dispenser with a temporary license has “six months,” from the date the temporary license is issued, to pass the hearing aid dispenser and practical examinations. In subsection (B), the requirement includes “the examination required in R9-16-307(E),” however, an applicant applying for an initial license by reciprocity is not required to take a practical examination. And again, in subsection (D), pass/fail scores are provided for an applicant applying for an initial license by reciprocity R9-16-307(E). An applicant applying for an initial license by reciprocity is required to take a jurisprudence examination which is not included in this Section – Examination Requirements. Additionally, the rule would be clear if in the subsection (D)(2), the type of examinations were clarified rather than citing A.R.S. § 36-1924(A)(4), This Article would be clearer if the Department changed the rule to include the jurisprudence examination and specified each type of examination, approval, and pass/fail score. Also, this Section would be clearer if “Department-designated” were not used when referring to an examination.</p>
R9-16-304	<p>The rule would be clearer; if the rule title “Written Hearing Aid Dispenser Examination” were changed to “Application for Examination” since, the rule contains application requirements for approval to take an examination rather than examination criteria. The rule would also be clearer if antiquated term in subsection (A)(1) “format provided by the Department” were changed to “a Department-provided format” and if subsection clarified</p>

	<p>whether the applicant has been disciplined by any state, territory, or district. The rule would also be clearer if subsection (A)(2) were simplified to require “Documentation of the applicant’s citizenship or alien status that complies with A.R.S. § 41-1080.” Also, in subsection (A)(4), an applicant licensed in another state is requested to indicate the state that the applicant was issued a hearing aid dispenser license. This subsection should be removed since the request for other state licensure information is related to reciprocity and is requested in R9-16-307, Application for Initial License by Reciprocity. Additionally, the language in subsection (B) and (C) would be more understandable if “Department-designed” were removed; and if “approval” in subsection (C)(2) were changed to make consistent with R9-16-303, Examination Requirements, and R9-16-316, Time-frames.</p>
R9-16-305	<p>The rule would be more understandable if the practical examination requirements were moved to R9-16-303, Examination Requirements, to ensure that the types of examinations, approvals, and pass/fail scores are accurately clarified in one Section.</p>
R9-16-306	<p>The rule is understandable and would be clearer if antiquated term in subsection (A)(1) “format provided by the Department” were changed to “a Department-provided format.” The requirement in subsection (A)(1)(b) is confusing since the attestation of information collected from R9-16-304 application was attested too at the time the R9-13-304 application was submitted and does not indicate if the information <u>is not</u> “currently true and accurate,” how an applicant is to communicate the change? Subsection (A)(1)(b) should be changed to specify how an applicant may update or change information provided in R9-16-304 application. Additionally, the attestation should include the applicant’s approval to allow the Department to make supplemental requests for information.</p>
R9-16-307	<p>The rule is understandable; however would be clearer if the antiquated term in subsection (A)(1) “in a format provided by the Department” were changed to “a Department-provided format.” In subsections (A)(1)(a) and (A)(2), the “information” and “documents” requirements would be clear if the specific “information” and “documents” required were listed rather than making reference to R9-16-304. Listing the requirements in subsection (A)(2) will also remove duplicate requirements in subsection (A)(1)(b). The requirement in subsection (A)(3)(b) should be changed since an applicant by reciprocity is not required to take a “Department-designated hearing aid dispenser examination...” and “a detailed description of each portion of the examination” should clarify that the examination is an examination provided by the state licensing entity. [See R9-16-301(10)] The requirement in subsection (B) should also be changed since subsections (B)(1) and</p>

	<p>(B)(2) reiterate subsection (B)(3) that reference statutes. And the requirements in subsection (E) and (F) do not indicate the type of examination an applicant seeking licensure through reciprocity is required to pass; the requirements should state that an applicant is required to pass a Department-provided jurisprudence and ethics examination. The rule would be clearer if the type of examination were stated instead of statutory requirement, and if requirements in subsection (E) and (F) were moved to R9-16-303, Examination Requirements. Additionally, the rule would be clearer if minor technical and grammatical changes were made, such as removing “as applicable” in subsection (F)(2).</p>
R9-16-308	<p>The rule is understandable; however could be clearer if antiquated term in subsection (A)(1) “format provided by the Department” were changed to “a Department-provided format.” Also, in subsection (A)(1)(g), specifying that a business organizations agrees to allow the Department to make supplemental requests for information during the approval process is necessary to ensure the Department may approve licensure. The rule would be clearer if the rule clarified that a business organization with more than one location request a duplicate license according to R9-16-307 for each location and if minor changes, such as simplifying the information required by a business organization and hearing aid dispensers employed in subsection (A)(1)(a) through (d), were made.</p>
R9-16-309	<p>The rule is understandable; however could be clearer if antiquated term in subsection (A)(1) “format provided by the Department” were changed to “a Department-provided format.” The rule would also be clearer if in subsection (A)(1)(a) the information requested were listed rather than referring to R9-16-304(A)(1)(a) through (A)(5). Subsections (G) and (H) could be combined and simplified and should include R9-16-310(B)(2) since all pertain to requirements for a hearing aid dispenser who is notified that their sponsorship has terminated. Additionally, the rule would be clearer if minor technical and grammatical changes were made, such as removing “Department-provided written” in subsection (C) and (E) and deleting “takes and” also in subsection (E).</p>
R9-16-310	<p>The rule is clear and understandable. Although, the rule would be more concise if the requirement in subsection (B)(2) were moved, as stated in R9-16-309 analysis. Also, requirement in subsection (B)(1) should clarify that the hearing aid dispenser receive a copy the hearing aid dispenser’s records maintained by the sponsor.</p>
R9-16-311	<p>The rule is understandable, however, could be clearer. Subsections (A)(1)(b) and (i) can be removed since the required information in (A)(1)(b) is collected during the initial application and the information in (A)(1)(i) regarding disciplinary action is redundant with subsections (A)(1)(g) and (h). The rule would be clear if the continuing education</p>

	requirements were simplified in (A)(2) and a statement of completion of continuing education were added to licensee attestation. The licensee attestation should also include licensee’s agreement to allow the Department to make supplemental request for additional information to ensure license renewal. Also, with removing continuing education requirement, subsection (A)(2), this Section will require renumbering. The rule would be clearer if minor technical and grammatical changes were made, such as replacing “applicant” with “licensee” and simplifying subsection (D) and (E).
R9-16-312	The rule is understandable and mostly clear and concise. However, the rule would be more clear and less burdensome if subsection (B)(5) and (9) were updated and if a new subsection were added to clarify how many continuing education hours are required to be completed and the time period for completion.
R9-16-313	The rule is understandable and clear. However, the information in subsection (A)(6) is also specified in R9-16-314(C); subsection (A)(6) should be removed.
R9-16-314	The rule is understandable and clear. Although, the rule would be clearer if equipment specified “other hearing devices;” if the American National Standard Institution/Acoustical Society of America updated to current 2018 version; and if “individual” in subsection (C)(1) were changed to refer to “client.”
R9-16-315	The rule is understandable, however, would be more concise if antiquated language in subsection (B) and (C) were changed, such as “which,” “is appropriate,” and “taken.”
R9-16-316	The rule is understandable, however, would be clearer if the time-frame requirements were simplified and consistent with other rules. For example, the rule should clarify that “The overall time-frame begins, for an initial license approval, on the date the Department receives an application packet.” Clarifying when an overall time-frame begins should be provided for each type of approval listed in the time-frame table. Also, citations in (C)(1) and (5) should be updated. Additionally, the rule should inform applicants and licensees of their right to an appeal should the Department deny approval for an initial licensure, renewal licensure, or to take an examination.
Table 3.1	The table is understandable; however, the Department may update the table based on changes made in R9-16-316, including clarifying approval of a practical examination.
R9-16-317	The rule is understandable; however could be clearer if antiquated term in subsection (A)(1) “format provided by the Department” were changed to “a Department-provided format.”

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No √

*If yes, please fill out the table below:*

Commenter	Comment	Agency's Response

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

The Department implemented statutory requirements for the licensing of hearing aid dispensers in Arizona Administrative Code (A.A.C.) in Title 9, Chapter 16, Article 3. Most of the rules in 9 A.A.C. 16, Article 3, were adopted in 1993. In 2001, R9-16-310, Waiver of Continuing Education Requirements, expired through Notice of Expiration of Rules at 7 A.A.R. 5029 and in 2002, R9-13-315, Time-frames, were adopted at 8 A.A.R. 2688. R9-13-315 was added to ensure that the licenses issued according to this Article comply with A.R.S. §§ 41-1071 through 41-1079. In 2004 at 10 A.A.R. 2063, the Department of Health Services (Department) established amended rules in R9-16-303 for Licensing Process and R9-16-307 for License Renewal, and added new R9-16-316 for Duplicate License Fee. Most recently, the rules were substantially revised in 2014 at 20 A.A.R. 1998. The Department through exempt rulemaking provided by Laws 2013, Ch. 33 amended Article 3 rules and added one new Section for Changes Affecting a License or Licensee; Request for a Duplicate License. Pursuant to Laws 2013, Ch. 33, the Department was exempt from the rulemaking requirements in A.R.S. Title 41, Chapter 6 and did not submit an economic, small business, and consumer impact statement with the 2014 Notice of Final Exempt Rulemaking. This five-year-review report (Report) is the Department's first Article 3 Report since the rules were substantially revised through exempt rulemaking.

As of March 2019, the Department has licensed 285 hearing aid dispensers and 123 business organization licensed as a hearing aid dispenser. During fiscal year 2018, the Department issued 61 initial licenses and 224 license renewals to hearing aid dispensers. The Department also issued 32 initial licenses and 91 license renewals to business organizations licensed as a hearing aid dispenser. The Department conducted two complaint investigations for hearing aid dispensers and one complaint investigation for a business organization licensed as a hearing aid dispenser. Additionally, no hearing aid dispenser application was withdrawn or denied. The Department believes affected persons include applicants, licensees, business organizations that are hearing aid dispensers, consumers, and the Department. In assessing the economic, small business, and consumer impact of the new rules, the Department provides a summary of changes considered.

The Department in Article 3 retitled and restructured all but one Section. The Department in R9-16-301 updated antiquated "CE" definition; added definitions in A.R.S. § 36-1901; and added 11 new definitions to clarify applicant, business organization, controlling person, designated agent, as well as hearing aid dispenser examination, continuing education hour, and course. In R9-16-302, the requirements for the advisory committee were removed since the advisory committee is established in A.R.S. § 36-1902 and not required in rule. The new

requirements in R9-16-302 clarify individuals who may act on behalf of an applicant or hearing aid dispenser. R9-16-303, Licensing Process, included hearing aid dispenser examination requirements, and by subsections, individual regular licensing requirements for each type of licensure: hearing aid dispenser, hearing aid dispenser by reciprocity, business organization for hearing aid dispenser, and temporary hearing aid dispenser license. New R9-16-303 added examination requirements for applicants and hearing aid dispensers with a temporary license to take a hearing aid dispenser examination and practical examination if approved by the Department. Old R9-16-303 was simplified and requirements for each type of licensure were moved to (new) Sections: R9-16-306, R9-16-307, R9-16-308, and R9-16-309. The requirements in old R9-16-304 for a sponsor to oversee a hearing aid dispenser with a temporary license were moved to current R9-16-310 and new R9-16-304 now contains application requirements for individuals who wish to apply for approval to take a hearing aid dispenser examination. Also, the examination requirements in old R9-16-305 were amended and moved to current R9-16-303, Examination Requirements. New R9-16-305 contains practical examination requirements. The requirements in old R9-16-306 were removed and the license renewal requirements in R9-16-307 were updated and moved to R9-16-311, License Renewal. And the continuing education licensure requirements in R9-16-308 and R9-16-309 were simplified and moved to new R9-16-312.

New R9-16-310 contains amended requirements for sponsors and added requirements for a sponsor who terminates a sponsorship agreement to notify the hearing aid dispenser with a temporary license and the Department of the termination. The license renewal requirements in new R9-16-311 replaced dispenser operating guidelines moved to R9-13-313. The new license renewal requirements updated antiquated terms, added continuing education requirement, and attempted to streamline the renewal process for each type of renewal. Old R9-16-312 inspection requirements were moved to R9-16-314, Equipment and Records, and in their place, added new continuing education requirements. The new continuing education requirements, previously R9-13-309, are much the same even though updated, except the requirements for the director to “preapprove other CE course work” and “withdraw the approval” were removed. The complaint procedure in old R9-16-313 was removed since the rule pertains to an internal management process for the Department. The requirements in new R9-16-313 contain hearing aid dispenser responsibilities, previously old dispenser operating guidelines. These requirements are similar too; however, requirements were simplified and what a hearing aid dispenser may not do was added. New R9-13-314 replaced old enforcement actions, now in new R9-16-315, Disciplinary Actions. The changes to the equipment and records requirements include updating the reference to national standard, adding a requirement for equipment calibration records; and clarifying requirements for client records.

New R9-16-315 contains disciplinary action requirements, previously enforcement actions. The requirements include updating and simplifying the levels of disciplinary action and clarifying statutory authorities required to take specified disciplinary actions. Old R9-16-315, Time-frames, moved to R9-16-316. New time-frames requirements in R9-16-316 were changed to include additional application approvals and removed subsection explaining purpose of the Section. The Time-frames table, Table 1, was updated to include additional application

approvals and was renumbered. The requirements in R9-16-317 contain new rule for changes affecting a license or a licensee and old requirements, from R9-16-316, for requesting a duplicate license. The requirement to report a change affecting a license was added to ensure that the Department is able to contact a licensee when necessary. And, the process for requesting a duplicate license added a requirement for a licensee to use a request “in a format provided by the Department” and simplified what information is required. In addition, the 2014 exempt rulemaking changed the licensing period for a regular license from “each year” to “every two years;” and the rules were changed to reflect the new licensure time period and as applicable, some fees were changed to reflect the new two-year licensing time period.

The Department believes having the new rules have benefited affected persons. For instance, the Department believes that changing the application renewal from each year to every two years reduced monetary and regulatory costs for applicants, licensees, the Department, and maybe some consumers if licensees passed on any saving to their customers. Additionally, the Department excepts that removing rules regarding the appointed committee, structure of the examination, and complaint procedures; and updating continuing education regulations, including removing the Department notice to randomly audit a hearing aid dispenser’s compliance with the continuing education requirements further reduced regulatory burdens and costs for applicants, licensees, and consumers. The Department also believes that affected persons have received significant increased benefits for having amended rules that are more clear, effective, and understandable. The Department’s overall assessment of the economic, small business, and consumer impact is that the benefits for having the new rules outweigh any associated costs.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No √

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

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The last five-year-review report for Article 3 was due in May 2016. In September 2014, the Department requested the Governor’s Regulatory Review Council reschedule the Report due to the Department substantially revising the rules in response to Laws 2013, Ch. 33 requiring the Department to extend licensure from one year to two years, make conforming changes to renewal and continuing education requirements and reduce the regulatory burden on hearing aid dispensers. On September 12, 2014, the Department’s request for rescheduling was granted and changed the Report due date for Article 3 rules to May 31, 2019.

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

The Department believes 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.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No √

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

Federal laws are not applicable to the rules in 9 A.A.C. 16, Article 3.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A general permit is not applicable. The Department, pursuant to A.R.S. § 36-1902(A), is authorized to license persons who apply for a license and possess all other qualifications required for licensure as a hearing aid dispenser.

14. **Proposed course of action:**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The Department plans to amend the rules in 9 A.A.C. 16, Article 3 to address issues identified in this Report in an expedited rulemakings. The Department plans to submit a Notice of Final Expedited Rulemaking to the Council by December 2019.

ATTACHMENT A – ARTICLE 3 CURRENT RULES

**ARTICLE 3. LICENSING HEARING AID DISPENSERS**

Section

- R9-16-301. Definitions
- R9-16-302. Individuals to Act for Applicant
- R9-16-303. Examination Requirements
- R9-16-304. Written Hearing Aid Dispenser Examinationu
- R9-16-305. Practical Examination
- R9-16-306. Application for an Initial License by Examination
- R9-16-307. Application for an Initial License by Reciprocity
- R9-16-308. Application for an Initial License to a Business Organization
- R9-16-309. Application for a Temporary License
- R9-16-310. Sponsors
- R9-16-311. License Renewal
- R9-16-312. Continuing Education
- R9-16-313. Responsibilities of a Hearing Aid Dispenser
- R9-16-314. Equipment and Records
- R9-16-315. Disciplinary Actions
- R9-16-316. Time-frames
- Table 3.1. Time-frames (in calendar days)
- R9-16-317. Change Affecting a License or a Licensee; Request for Duplicate License

**ARTICLE 3. LICENSING HEARING AID DISPENSERS**

## ATTACHMENT A – ARTICLE 3 CURRENT RULES

### **R9-16-301. Definitions**

In addition to the definitions in A.R.S. § 36-1901, the following definitions apply in this Article unless otherwise specified:

1. "Applicant" means an individual or a business organization that submits to the Department an approval to test, or initial, renewal or temporary license application packet to practice as a hearing aid dispenser.
2. "Application packet" means the information, documents, and fees required by the Department to apply for a license.
3. "Business organization" means an entity identified in A.R.S. § 36-1910.
4. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
5. "Continuing education" means a course that provides instruction and training that directly relates to the practice of fitting and dispensing hearing aids as specified in A.R.S. § 36-1904.
6. "Continuing education hour" means 50 minutes of continuing education.
7. "Controlling person" has the same meaning as in A.R.S. § 36-881.
8. "Course" means a workshop, seminar, lecture, conference, or class.
9. "Department-designated written hearing aid dispenser examination" means one of the following that has been identified by the Department as complying with the requirements in A.R. S. § 36-1924:
  - a. The International Licensing Examination for Healthcare Professionals, administered by the International Hearing Society; or
  - b. A test provided by the Department or other organization.
10. "Designated agent" means an individual who is authorized by an applicant or hearing aid dispenser to receive communications from the Department, including legal service of process, and to file or sign documents on behalf of the applicant or hearing aid dispenser.
11. "Disciplinary action" means a proceeding that is brought against a licensee by the Department under A.R.S. § 36-1934 or a state licensing entity.
12. "In-service education" means organized instruction or information that is provided to a licensed hearing aid dispenser.

### **R9-16-302. Individuals to Act for Applicant**

## ATTACHMENT A – ARTICLE 3 CURRENT RULES

When an applicant or a hearing aid dispenser is required by this Article to provide information on or sign an application form or other document, the following shall satisfy the requirement on behalf of the applicant or hearing aid dispenser:

1. If the applicant or the hearing aid dispenser is an individual, the individual; or
2. If the applicant or hearing aid dispenser is a business organization, the designated agent who:
  - a. Is a controlling person of the business organization,
  - b. Is a U.S. citizen or legal resident, and
  - c. Has an Arizona address.

### **R9-16-303. Examination Requirements**

- A. Within two years after the date an applicant receives the approval notification in R9-16-304(C)(1), or a hearing aid dispenser with a temporary license receives the approval in R9-16-309(C), the applicant or hearing aid dispenser with a temporary license shall take and obtain a passing score on the Department-designated:
  1. Written hearing aid dispenser examination required R9-16-304, and
  2. Practical examination required in R9-16-305.
- B. An applicant approved to take the Department-designated practical examination according to R9-16-304(C)(1), the examination required in R9-16-307(E), or a hearing aid dispenser with a temporary license approved to take the Department-designated practical examination according to R9-16-309 (F)(1) shall:
  1. Arrive on the scheduled date and time of the examination,
  2. Provide proof of identity by a government-issued photographic identification card that is provided by the applicant or hearing aid dispenser with a temporary license upon the request of the individual administering the examination, and
  3. Exhibit ethical conduct during the examination process.
- C. An applicant or hearing aid dispenser with a temporary license who does not comply with subsection (B)(1) or (B)(2) is ineligible to take the examination on the scheduled date and time.
- D. An applicant or hearing aid dispenser with a temporary license taking the examination:
  1. Required in R9-16-307(E), will receive:
    - a. A passing score if 75% or more of the responses are correct, as determined by the Department; or
    - b. A failing score if fewer than 75% of the responses are incorrect, as determined by the Department; and

ATTACHMENT A – ARTICLE 3 CURRENT RULES

2. Required in R9-16-304(C)(1) or R9-16-309 (F)(1) will receive a passing score on the examination if the applicant or hearing aid dispenser with a temporary license demonstrates the proficiencies in A.R.S. § 36-1924(A)(4), as determined by the Department.
- E. The Department shall notify an applicant or hearing aid dispenser with a temporary license that the applicant or hearing aid dispenser with a temporary license may apply for an initial hearing aid dispenser license when the applicant or hearing aid dispenser with a temporary license has received a passing score on both of the examinations in subsection (A).

**R9-16-304. Written Hearing Aid Dispenser Examination**

- A. An applicant applying for an approval to take the Department-designated written hearing aid dispenser examination shall submit to the Department:
  1. An application in a format provided by the Department that contains:
    - a. The applicant's name, home address, telephone number, and e-mail address;
    - b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
    - c. If applicable, the name of the applicant's employer and the employer's business address and business telephone number;
    - d. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state or jurisdiction; and
    - e. If the applicant was convicted of a felony or misdemeanor:
      - i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the applicant was convicted, and
      - iv. The disposition of the case;
    - f. Whether within the two years before the application date, a hearing aid dispenser license issued to the applicant was suspended or revoked;
    - g. Whether the applicant is currently ineligible to apply for a hearing aid dispenser license due to a prior revocation or suspension of the applicant's hearing aid dispenser license;
    - h. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-316;
    - i. An attestation that the information submitted as part of the application is true and accurate; and

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- j. The applicant’s signature and date of signature;
- 2. A copy of the applicant’s:
  - a. U.S. passport, current or expired;
  - b. Birth certificate;
  - c. Naturalization documents; or
  - d. Documentation of legal resident alien status;
- 3. Documentation that the applicant:
  - a. Received a high school diploma from an accredited high school;
  - b. Passed the general education development tests;
  - c. Completed an associate degree or higher from an accredited college or university; or
  - d. Continuously engaged in the practice of fitting and dispensing hearing aids during the three years before August 11, 1970;
- 4. If the applicant was issued a hearing aid dispenser license in another state or jurisdiction, where the applicant was issued a hearing aid dispenser license; and
- 5. A nonrefundable \$100 application fee.
- B. The Department shall review an application for an approval to take the Department-designated written hearing aid examination according to R9-16-316 and Table 3.1.
- C. Within five calendar days after the Department receives the applicant’s Department-designated written hearing aid dispenser examination results, the Department shall provide written notification to the applicant of:
  - 1. A passing score that includes approval to take the Department-designated practical examination in R9-16-305; or
  - 2. A failing score that includes, as applicable, approval to retake the Department-designated written hearing aid dispenser examination.

**R9-16-305. Practical Examination**

- A. After an applicant takes the Department-designated practical examination required in R9-16-303(A), the Department shall provide written notification to the applicant within five calendar days after the Department receives the applicant’s examination results whether the applicant received:
  - 1. A passing score; or
  - 2. A failing score and, as applicable, approval to retake the Department-designated practical examination.

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- B. The Department shall administer the Department-designated practical exam that complies with A.R.S. § 36-1924(A)(4):
  - 1. In October each calendar year, and
  - 2. According to A.R.S. § 36-1923.

**R9-16-306. Application for an Initial License by Examination**

- A. Within six months after receiving the written notice in R9-16-303(E), an applicant for an initial license by examination shall submit to the Department:
  - 1. An application in a format provided by the Department that contains:
    - a. The applicant's name, home address, telephone number, and e-mail address;
    - b. An attestation that the information submitted as part of the application for approval to take the Department-designated written hearing aid dispenser examination required in R9-16-304 is currently true and accurate; and
    - c. The applicant's signature and date signed; and
  - 2. A license fee of \$200.
- B. The Department shall review an application for an initial hearing aid dispenser license by examination according to R9-16-316 and Table 3.1.
- C. If the Department does not issue an initial hearing aid dispenser license by examination to an applicant, the Department shall return the license fee to the applicant.
- D. An initial hearing aid dispenser license is valid for two years from the date of issue.

**R9-16-307. Application for an Initial License by Reciprocity**

- A. An applicant for an initial license by reciprocity shall submit to the Department:
  - 1. An application in a format provided by the Department that contains:
    - a. The information required in R9-16-304(A)(1)(a) through (A)(1)(j),
    - b. The name of each state that issued the applicant a current hearing aid dispenser license,
    - c. The license number of each current hearing aid dispenser license, and
    - d. The date each current hearing aid dispenser license was issued;
  - 2. The documents required R9-16-304(A)(2) through (A)(5);
  - 3. For each state named in subsection (A)(1)(b):
    - a. A statement, on the letterhead of the state licensing entity that issued the hearing aid dispenser license and signed by an official of the state licensing entity, that the applicant holds a current hearing aid dispenser license in good standing;

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- b. A copy of the written and practical portions of the Department -designated hearing aid dispenser examination taken by the applicant or a detailed description of each portion of the examination;
  - c. The state licensing entity’s statement of:
    - i. The applicant’s score on each section of the hearing aid dispenser examination taken by the applicant,
    - ii. The minimum passing score for each section of the hearing aid dispenser examination taken by the applicant, and
    - iii. The minimum passing score for the hearing aid dispenser examination taken by the applicant;
  - d. A copy of the applicant's current license;
  - e. An attestation that the information submitted as part of the application for an initial license by reciprocity is true and accurate; and
  - f. The applicant’s signature and date of signature; and
4. A \$200 license fee.
- B. Based on the information submitted under subsections (A)(1) through (A)(3), the Department shall determine whether:
- 1. The content of the examination taken by the applicant is substantially the same as the content of the Department's examinations in:
    - a. The Department-designated written hearing aid dispenser examination, and
    - b. The Department-designated practical examination;
  - 2. The applicant's scores on the examinations in (A)(3)(c) meet the requirements in R9-16-303 for passing; and
  - 3. The applicant complies with A.R.S. §§ 36-1922 and 36-1923(A), and this Article.
- C. The Department shall review an application for an initial license by reciprocity according to R9-16-316 and Table 3.1.
- D. If the Department does not issue an initial license by reciprocity to an applicant, the Department shall return the license fee to the applicant.
- E. If the Department issues an initial license by reciprocity to an applicant, the Department shall provide notification to the applicant that the applicant is approved to take and required to pass the examination identified in A.R.S. § 36-1922 within six months after the initial license by reciprocity is issued.

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- F. After an applicant takes the examination in subsection (E), the Department shall provide written notification to the applicant within five calendar days after the Department receives the applicant's examination results whether the applicant received:
  - 1. A passing score; or
  - 2. A failing score and, as applicable, approval to retake the examination.
- G. An initial license by reciprocity issued to an applicant is valid for two years from the date of issue.

### **R9-16-308. Application for an Initial License to a Business Organization**

- A. An applicant that is a business organization shall submit to the Department:
  - 1. An application for an initial hearing aid dispenser license in a format provided by the Department that contains:
    - a. The name of the business organization;
    - b. The business organization's Arizona business name, address, and telephone number;
    - c. The name, address, telephone number, and e-mail address of the individual authorized by the business organization to be the designated agent;
    - d. The name, business telephone number, and Arizona hearing aid dispenser license number of each hearing aid dispenser employed by the business organization in Arizona;
    - e. Whether the business organization or a hearing aid dispenser working for the business organization has had a hearing aid dispenser license suspended or revoked by any state within two years before the application date;
    - f. Whether the business organization or a hearing aid dispenser working for the business organization currently is not eligible for licensing in any state due to a suspension or revocation;
    - g. An attestation that information required as part of the application has been submitted and is true and accurate; and
    - h. The signature and date of signature from the designated agent;
  - 2. A nonrefundable \$100 application fee; and
  - 3. A \$200 license fee.
- B. The Department shall review an application for an initial hearing aid dispenser license to a business organization according to R9-16-316 and Table 3.1.

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- C. If the Department does not issue an initial hearing aid dispenser license to a business organization, the Department shall return the license fee in subsection (A)(3) to the applicant.
- D. A business organization licensed according to this Section shall comply with A.R.S. § 36-1910.
- E. An initial license issued to a business organization according to this Section is valid for two years from the date of issue.

**R9-16-309. Application for a Temporary License**

- A. An applicant for a temporary license shall submit to the Department:
  - 1. An application in a format provided by the Department that contains:
    - a. The information in R9-16-304(A)(1)(a) through (A)(5); and
    - b. The applicant's sponsor's:
      - i. Name,
      - ii. Business address,
      - iii. Business telephone number, and
      - iv. Arizona hearing aid dispenser license number;
  - 2. A statement signed by the sponsor that the sponsor is a licensed hearing aid dispenser who agrees to train, supervise, and be responsible for the applicant's hearing aid dispenser practice according to A.R.S. § 36-1905; and
  - 3. A \$100 license fee.
- B. The Department shall review an application for a temporary license according to R9-16-316 and Table 3.1.
- C. If the Department issues a temporary license to the applicant, the Department shall also provide written notification to the applicant of approval to take the Department-designated written hearing aid dispenser examination within six months after the temporary license is issued.
- D. If the Department does not issue an applicant a temporary license, the Department shall return the license fee in subsection (A)(3) to the applicant.
- E. If a hearing aid dispenser with a temporary license takes and fails the Department-designated written hearing aid dispenser examination required in subsection (C), the temporary hearing aid dispenser may:
  - 1. Renew the temporary license once according to R9-16-311(F), and
  - 2. Take the Department-designated written hearing aid dispenser examination within the six months after renewal of the temporary license.

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- F. Within five calendar days after the Department receives an individual’s Department-designated written hearing aid dispenser examination results, the Department shall provide written notification to the individual of:
  - 1. A passing score that includes approval to take the Department-designated practical examination; or
  - 2. A failing score that includes, as applicable, approval to retake the Department-designated written hearing aid dispenser examination.
- G. A temporary license is no longer valid on the date the Department receives notice from the sponsor that the sponsor is terminating sponsorship.
- H. A hearing aid dispenser whose temporary license is terminated according to subsection (G), shall:
  - 1. Not practice until issued a new license, and
  - 2. May apply for an initial license as a hearing aid dispenser according to this Article or a temporary license according to this Section.
- I. A temporary license is valid for 12 months from the date of issue.

**R9-16-310. Sponsors**

- A. A sponsor shall:
  - 1. Provide to a hearing aid dispenser with a temporary license a minimum of 64 hours per month of on-site training and supervision that:
    - a. Consists of coordinating, directing, watching, inspecting, and evaluating the fitting and dispensing activities of the hearing aid dispenser with a temporary license; and
    - b. Directly relates to the type of training and education needed to pass the licensing examination required in A.R.S. § 36-1924;
  - 2. Maintain a record that:
    - a. Is signed by the hearing aid dispenser with a temporary license;
    - b. Has the date, time, and content of the training and supervision provided to the hearing aid dispenser with a temporary license, as required in subsection (A)(1); and
    - c. Is available for inspection by the Department for at least 12 months after the end of the sponsorship agreement; and
  - 3. Not provide sponsorship to more than two hearing aid dispensers with temporary licenses, at one time.

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- B. When a sponsor terminates a sponsorship agreement with a hearing aid dispenser with a temporary license:
1. The sponsor shall:
    - a. Provide a written notice to the hearing aid dispenser with a temporary license indicating termination of the sponsorship agreement; and
    - b. Provide a copy of the written notice required in subsection (B)(1)(a), and documentation that the hearing aid dispenser with a temporary license received the written notice, to the Department; and
  2. The hearing aid dispenser with a temporary license shall return the temporary license to the Department.

### **R9-16-311. License Renewal**

- A. A licensee, except for a hearing aid dispenser with a temporary license, shall submit a renewal application in a format provided by the Department that contains:
1. For an individual licensed as a hearing aid dispenser:
    - a. The applicant's name, home address, telephone number, and e-mail address;
    - b. The applicant's Social Security Number, as required under A.R.S. §§ 25-320 and 25-502;
    - c. If applicable, the name of the applicant's employer and the employer's business address and business telephone number;
    - d. The applicant's license number and expiration date;
    - e. Since the hearing aid dispenser's previous license application, whether the applicant has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state or jurisdiction;
    - f. If the applicant was convicted of a felony or misdemeanor involving moral turpitude:
      - i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the applicant was convicted, and
      - iv. The disposition of the case;
    - g. Whether the applicant has had a license revoked or suspended by any state within the previous two years;
    - h. Whether the applicant is currently ineligible for licensure in any state because of a prior license revocation or suspension;

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- i. Whether any disciplinary action has been imposed by any state, territory or district in this country for an act upon the applicant's hearing aid dispenser license;
    - j. An attestation that information required as part of the application has been submitted and is true and accurate; and
    - k. The applicant's signature and date of signature;
  2. In addition to the requirements in subsection (A)(1) an individual shall submit:
    - a. Documentation of 24 continuing education hours completed within the 24 months before the expiration date on the license, including:
      - i. The name of the organization providing the course;
      - ii. The date and location where the course was provided;
      - iii. The title of each course attended;
      - iv. A description of each course's content;
      - v. Whether the course was taught in-person;
      - vi. The name of the instructor;
      - vii. The instructor's education, training, and experience background, if available; and
      - viii. The number of continuing education hours earned for each course; and
    - b. A \$200 license renewal fee; or
  3. For a business organization licensed as a hearing aid dispenser:
    - a. The information in subsection R9-16-308(A)(1), and
    - b. A \$200 license renewal fee.
- B. A licensee, except for a hearing aid dispenser with a temporary license, who renews a license within 30 calendar days after the expiration date of the license, shall submit to the Department:
  1. The information and renewal fee required in subsection (A), and
  2. A \$25 late fee.
- C. A renewal license issued to a licensee, except for a hearing aid dispenser with a temporary license, is valid for two years after the expiration date of the previous license issued by the Department.
- D. If a licensee does not comply with subsections (A) or (B), the license is nonrenewable and:
  1. The hearing aid dispenser may apply for a new license according to subsection (E), or
  2. The business organization may apply for a new license according to R9-16-308.
- E. A licensee whose license is nonrenewable according to subsection (D)(1) and it is within one year after the expiration date of the hearing aid dispenser's license:

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1. The applicant shall submit an application in a format provided by the Department that contains:
    - a. The information required in R9-16-304(A)(1) through (A)(4), and
    - b. Documentation of continuing education according to R9-16-312; and
  2. A nonrefundable \$100 application fee and a \$100 license fee.
- F. If allowed in R9-16-309(E)(1), a hearing aid dispenser with a temporary license shall submit at least 30 calendar days before the expiration date on the license, a renewal application in a format provided by the Department that contains:
1. The information in R9-16-304(A)(1) through (A)(4);
  2. The applicant's sponsor's:
    - a. Name,
    - b. Business address,
    - c. Business telephone number, and
    - d. Arizona hearing aid dispenser license number;
  3. A statement signed by the sponsor that the sponsor is a licensed hearing aid dispenser who agrees to train, supervise, and be responsible for the applicant's hearing aid dispenser practice according to A.R.S. § 36-1905; and
  4. A \$100 license renewal fee.
- G. A renewal license issued to a licensee according to subsection (F) is valid for one year after the expiration date of the previous license issued by the Department.
- H. The Department shall review a renewal application according to R9-16-316 and Table 3.1.

### **R9-16-312. Continuing Education**

- A. Continuing education shall:
1. Directly relate to the practice of fitting and dispensing hearing aids;
  2. Have educational objectives that exceed an introductory level of knowledge of fitting and dispensing hearing aids; and
  3. Consist of courses that include advances within the last five years in:
    - a. Procedures in the selection and fitting of hearing aids,
    - b. Pre- and post-fitting management of clients,
    - c. Instrument circuitry and acoustic performance data,
    - d. Ear mold design and modification contributing to improved client performance,
    - e. Audiometric equipment or testing techniques that demonstrate an improved ability to identify and evaluate hearing loss,

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- f. Auditory rehabilitation,
  - g. Ethics,
  - h. Federal and state statutes or rules, or
  - i. Assistive listening devices.
- B.** A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (A):
- 1. Hearing Healthcare Providers of Arizona,
  - 2. Arizona Speech-Language-Hearing Association,
  - 3. American Speech-Language-Hearing Association,
  - 4. International Hearing Society,
  - 5. International Institute for Hearing Instrument Studies,
  - 6. American Auditory Society,
  - 7. American Academy of Audiology,
  - 8. Academy of Doctors of Audiology,
  - 9. Arizona Society of Otolaryngology-Head and Neck Surgery,
  - 10. American Academy of Otolaryngology-Head and Neck Surgery, or
  - 11. An organization determined by the Department to be consistent with an organization in subsection (B)(1) through (10).
- C.** A hearing aid dispenser shall comply with the continuing education requirements in A.R.S. § 36-1904.

### **R9-16-313. Responsibilities of a Hearing Aid Dispenser**

- A.** A hearing aid dispenser licensed according to subsections R9-16-306 or R9-16-307 shall:
- 1. Upon licensure, notify the Department in writing of the address where the hearing aid dispenser practices the fitting and dispensing of hearing aids;
  - 2. Conspicuously post the license received according to subsections R9-16-306 or R9-16-307 in the hearing aid dispenser's office or place of business;
  - 3. Except as specified in subsections (A)(4) or (A)(5), conduct audiometric tests before selecting a hearing aid for a client that provides detailed information about the client's hearing loss, including:
    - a. Type, degree, and configuration of hearing loss;
    - b. Ability, as measured by the percentage of words the client is able to repeat correctly, to discriminate speech; and
    - c. The client's most comfortable and uncomfortable loudness levels in decibels;

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4. Have the option to conduct audiometric testing required in subsection (A)(3) before selling a client a hearing aid if the client provides to the dispenser the information required in subsection (A)(3) from a licensed professional and the information was:
    - a. Obtained within the previous 12 months for an adult, or
    - b. Within the previous six months for an individual under the age of 18;
  5. Have the option to conduct audiometric testing required in subsection (A)(3) if the tests cannot be performed on the client due to:
    - a. The client's young age, or
    - b. A physical or mental disability;
  6. Maintain documentation for three years from the date of receipt of the information, that supports the exclusion of specific audiometric tests according to subsections (A)(4) and (A)(5);
  7. Evaluate the performance characteristics of the hearing aid as it functions on the client's ear for the purpose of assessing the degree of audibility provided by the device and benefit to the client;
  8. Provide a bill of sale to a client according to A.R.S. § 36-1909(A) that contains:
    - a. Information required in A.R.S. § 36-1909;
    - b. A complete description of:
      - i. Warranty information, and
      - ii. The conditions of any offer of a trial period with a money back guarantee or partial refund; and
    - c. The client's signature and date of signature; and
  9. Not:
    - a. Practice without a license according to A.R.S. § 36-1907,
    - b. Commit unlawful acts according to A.R.S. § 36-1936, or
    - c. Commit actions described in A.R.S. § 36-1934(A).
- B. The trial period described in subsection (A)(8)(b)(ii) shall not include any time that the hearing aid is in the possession of the hearing aid dispenser or the manufacturer of the hearing aid.

**R9-16-314. Equipment and Records**

- A. A licensee shall maintain an audiometer that performs the audiometric tests as described in R9-16-313 according to the manufacturer's specifications.
- B. If a licensee uses equipment that requires calibration, the licensee shall ensure that:

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1. The equipment is calibrated at least every 12 months and according to the American National Standard - Specifications for Audiometers, S3.6-2010, Standards Secretariat, c/o Acoustical Society of America, 1305 Walt Whitman Road, Suite 300, Melville, New York, 11747-4300, November 2, 2010, incorporated by reference and on file with the Department and the Office of the Secretary of State, with no future additions or amendments; and
  2. A written record of the calibration is maintained in the same location as the calibrated equipment for at least 36 months after the date of the calibration.
- C. A licensee shall maintain a record according to A.R.S. § 32-3211 for each client with the following documents for at least 36 months after the date the licensee provided a service or dispensed a product while engaged in the practice of fitting and dispensing hearing aids:
1. The name, address, and telephone number of the individual to whom services are provided;
  2. A written statement from a licensed physician that the client has medical clearance to use hearing aids or a medical waiver signed by the client who is 18 years of age or older;
  3. For each audiometric test conducted for the client, the:
    - a. Audiometric test results by date and procedure used in evaluating hearing disorders or determining the need for dispensing a product or service,
    - b. Name of the individual who performed the audiometric tests, and
    - c. Signature of the individual who performed the audiometric tests;
  4. A copy of the bill of sale required in R9-16-313(A)(8);
  5. Documented verification of the effectiveness of the hearing aid required in R9-16-313(A)(7); and
  6. The contracts, agreements, warranties, trial periods, or other documents involving the client.

### **R9-16-315. Disciplinary Actions**

- A. The Department may, as applicable:
1. Take an action under A.R.S. § 36-1934,
  2. Request an injunction under A.R.S. § 36-1937, or
  3. Assess a civil money penalty under A.R.S. § 36-1939.
- B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
1. The type of violation,

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2. The severity of the violation,
  3. The danger to the public health and safety,
  4. The number of violations;
  5. The number of clients affected by the violations,
  6. The degree of harm to the consumer,
  7. A pattern of noncompliance, and
  8. Any mitigating or aggravating circumstances.
- C. A licensee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.
- D. The Department shall notify a licensee’s employer within five days after the Department initiates a disciplinary action against a licensee.

### **R9-16-316. Time-frames**

- A. The overall time-frame described in A.R.S. § 41-1072 for each type of license or approval granted by the Department is specified in Table 3.1. The Department and an applicant may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25 percent of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of license or approval granted by the Department is specified in Table 3.1.
1. The administrative completeness review time-frame begins:
    - a. For an applicant submitting an application for approval to take the Department-designated written hearing aid dispenser examination, when the Department receives the application required in R9-16-304(A);
    - b. For an applicant submitting an application for initial hearing aid dispenser license by examination, when the Department receives the application required in R9-16-306;
    - c. For an applicant submitting an application for initial hearing aid dispenser license by reciprocity, when the Department receives the application required in R9-16-307;
    - d. For a business organization submitting an application for an initial hearing aid dispenser license to a business organization, when the Department receives the application required in R9-16-308;

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- e. For an applicant submitting an application for a temporary license, when the Department receives the application required in R9-16-309;
  - f. For a licensed hearing aid dispenser applying to renew a hearing aid dispenser license, when the Department receives the application required in R9-16-311;
  - g. For a business organization applying to renew a business organization hearing aid dispenser license, when the Department receives the application required in R9-16-311; and
  - h. For a temporary hearing aid dispenser applying to renew a temporary license, when the Department receives the application required in R9-16-311.
2. If an application is incomplete, the Department shall provide a notice of deficiencies to the applicant or licensee describing the missing documents or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Department receives the documentation or information listed in the notice of deficiencies. An applicant or licensee shall submit to the Department the documentation or information listed in the notice of deficiencies within the time specified in Table 3.1 for responding to a notice of deficiencies.
  3. If the applicant or licensee submits the documentation or information listed in the notice of deficiencies within the time specified in Table 3.1, the Department shall provide a written notice of administrative completeness to the applicant or licensee.
  4. If the applicant or licensee does not submit the documentation or information listed in the notice of deficiencies within the time specified in Table 3.1, the Department shall consider the application withdrawn.
  5. When an application is complete, the Department shall provide a notice of administrative completeness to the applicant or licensee.
  6. If the Department issues a license or notice of approval during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072 is specified in Table 3.1 and begins on the date of the notice of administrative completeness.
1. If an application complies with this Article and A.R.S. Title 36, Chapter 17, Articles 1 through 4, the Department shall issue a notice of approval to an applicant or a licensee to an applicant or licensee.

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2. If an application does not comply with this Article and A.R.S. Title 36, Chapter 17, Articles 1 through 4, the Department shall make one comprehensive written request for additional information, unless the applicant or licensee has agreed in writing to allow the Department to submit supplemental requests for information. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional or a supplemental request for information until the date that the Department receives all of the information requested.
3. An applicant or licensee shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information within the time specified in Table 3.1.
4. If the applicant or licensee does not submit the additional information within the time specified in Table 3.1 or the additional information submitted by the applicant or licensee does not demonstrate compliance with this Article and A.R.S. Title 36, Chapter 17, Articles 1 through 4, the Department shall provide to the applicant or licensee a written notice of denial that complies with A.R.S. § 41-1092.03(A).
5. If the applicant or licensee submits the additional information within the time specified in Table 3.1 and the additional information submitted by the applicant or licensee demonstrates compliance with this Article and A.R.S. Title 36, Chapter 17, Articles 1 through 4, the Department shall issue a license to an applicant or licensee or a notice of approval to an applicant.

**Table 3.1. Time-frames (in calendar days)**

<b>Type of Approval</b>	<b>Statutory Authority</b>	<b>Overall Time-frame</b>	<b>Administrative Completeness Review Time-frame</b>	<b>Time to Respond to Notice of Deficiency</b>	<b>Substantive Review Time-frame</b>	<b>Time to Respond to Comprehensive Written Request</b>
Approval to take the Department-designated Written	A.R.S. §§ 36-1923, 36-1924	60	30	60	30	30

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Hearing Aid Dispenser Examination						
Initial License by Examination	A.R.S. §§ 36-1904, 36-1923	60	30	30	30	15
Initial License by Reciprocity	A.R.S. § 36-1922	60	30	30	30	15
Initial License to a Business Organization	A.R.S. § 36-1910	60	30	30	30	15
Temporary License	A.R.S. § 36-1926	60	30	30	30	15
Renewal of a Hearing Aid Dispenser License	A.R.S. § 36-1904	60	30	30	30	15
Renewal of a Business Organization License	A.R.S. § 36-1910	60	30	30	30	15
Renewal of a Temporary License	A.R.S. § 36-1926	60	30	30	30	15

R9-16-317. Change Affecting a License or a Licensee; Request for Duplicate License

- A. A licensee shall submit a written notice to the Department in writing within 30 calendar days after the effective date of a change in:
1. The licensee's home address or e-mail address, including the new home address or e-mail address;
  2. The licensee's name, including a copy of one of the following with the licensee's new name:

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- a. Marriage certificate,
  - b. Divorce decree, or
  - c. Other legal document establishing the licensee's new name; or
3. The place or places where the licensee engages in the practice of hearing aid dispensing, including the address or addresses of the place or places where the licensee engages in the practice of hearing aid dispensing.
- B. A licensee may obtain a duplicate license by submitting to the Department a request for a duplicate license in a format provided by the Department that includes:
1. The licensee's name and address,
  2. The licensee's license number and expiration date,
  3. The licensee's signature and date of signature, and
  4. A \$25 duplicate license fee.

## ATTACHMENT B – ARTICLE 3 STATUTORY AUTHORITIES

### **36-104. Powers and duties**

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county

## ATTACHMENT B – ARTICLE 3 STATUTORY AUTHORITIES

governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.
10. Establish and maintain separate financial accounts as required by federal law or regulations.
11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
12. Take appropriate steps to reduce or contain costs in the field of health services.
13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.
14. Encourage an effective use of available federal resources in this state.
15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.
16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.
17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.
19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.
22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

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23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.
24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.
25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).
26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

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

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

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health

## ATTACHMENT B – ARTICLE 3 STATUTORY AUTHORITIES

services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

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

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

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

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

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

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

### **36-136. Powers and duties of director; compensation of personnel; rules; definitions**

A. The director shall:

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

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hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

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

I. The director, by rule, shall:

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

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

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

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

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

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

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

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

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(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds,

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

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

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

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

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

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

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

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

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

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The

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department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

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

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

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

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

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

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### 36-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Accredited program" means a program leading to the award of a degree in audiology that is accredited by an organization recognized for that purpose by the United States department of education.
2. "Approved training program" means a postsecondary speech-language pathology assistant training program that is approved by the director.
3. "Assistive listening device or system" means an amplification system that is specifically designed to improve the signal-to-noise ratio for the listener who is hearing impaired, reduce interference from noise in the background and enhance hearing levels at a distance by picking up sound from as close to the source as possible and sending it directly to the ear of the listener, excluding hearing aids.
4. "Audiologist" means a person who engages in the practice of audiology and who meets the requirements prescribed in this chapter.
5. "Audiology" means the nonmedical and nonsurgical application of principles, methods and procedures of measurement, testing, evaluation and prediction that are related to hearing, its disorders and related communication impairments for the purpose of nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.
6. "Clinical interaction" means a fieldwork practicum in speech-language pathology that is supervised by a licensed speech-language pathologist.
7. "Department" means the department of health services.
8. "Direct supervision" means the on-site, in-view observation and guidance of a speech-language pathology assistant by a licensed speech-language pathologist while the speech-language pathology assistant performs an assigned clinical activity.
9. "Director" means the director of the department.
10. "Disorders of communication" means an organic or nonorganic condition that impedes the normal process of human communication and includes disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition and communications and oral, pharyngeal and laryngeal sensorimotor competencies.
11. "Disorders of hearing" means an organic or nonorganic condition, whether peripheral or central, that impedes the normal process of human communication and includes disorders of auditory sensitivity, acuity, function or processing.
12. "Hearing aid" means any wearable instrument or device designed for or represented as aiding or improving human hearing or as aiding, improving or compensating for defective human hearing, and any parts, attachments or accessories of the instrument or device, including ear molds, but excluding batteries and cords.
13. "Hearing aid dispenser" means any person who engages in the practice of fitting and dispensing hearing aids.
14. "Indirect supervision" means supervisory activities, other than direct supervision that are performed by a licensed speech-language pathologist and that may include consultation, record review and review and evaluation of audiotaped or videotaped sessions.
15. "Letter of concern" means an advisory letter to notify a licensee that, while there is insufficient evidence to support disciplinary action, the director believes the

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licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the director may result in action against the licensee.

16. "License" means a license issued by the director under this chapter and includes a temporary license.

17. "Nonmedical diagnosing" means the art or act of identifying a communication disorder from its signs and symptoms. Nonmedical diagnosing does not include diagnosing a medical disease.

18. "Practice of audiology" means:

(a) Rendering or offering to render to a person or persons who have or who are suspected of having disorders of hearing any service in audiology including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.

(b) Participating in hearing conservation, hearing aid and assistive listening device evaluation and hearing aid prescription preparation, fitting, dispensing and orientation.

(c) Screening, identifying, assessing, nonmedical diagnosing, preventing and rehabilitating peripheral and central auditory system dysfunctions.

(d) Providing and interpreting behavioral and physiological measurements of auditory and vestibular functions.

(e) Selecting, fitting and dispensing assistive listening and alerting devices and other systems and providing training in their use.

(f) Providing aural rehabilitation and related counseling services to hearing impaired persons and their families.

(g) Screening speech-language and other factors that affect communication function in order to conduct an audiologic evaluation and an initial identification of persons with other communications disorders and making the appropriate referral.

(h) Planning, directing, conducting or supervising services.

19. "Practice of fitting and dispensing hearing aids" means the measurement of human hearing by means of an audiometer or by any other means, solely for the purpose of making selections or adaptations of hearing aids, and the fitting, sale and servicing of hearing aids, including assistive listening devices and the making of impressions for ear molds and includes identification, instruction, consultation, rehabilitation and hearing conservation as these relate only to hearing aids and related devices and, at the request of a physician or another licensed health care professional, the making of audiograms for the professional's use in consultation with the hearing impaired. The practice of fitting and dispensing hearing aids does not include formal auditory training programs, lip reading and speech conservation.

20. "Practice of speech-language pathology" means:

(a) Rendering or offering to render to an individual or groups of individuals who have or are suspected of having disorders of communication service in speech-language pathology including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.

(b) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of speech and language.

(c) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of oral-pharyngeal functions and related disorders.

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- (d) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating cognitive and communication disorders.
  - (e) Assessing, selecting and developing augmentative and alternative communication systems and providing training in the use of these systems and assistive listening devices.
  - (f) Providing aural rehabilitation and related counseling services to hearing impaired persons and their families.
  - (g) Enhancing speech-language proficiency and communication effectiveness.
  - (h) Screening hearing and other factors for speech-language evaluation and initially identifying persons with other communication disorders and making the appropriate referral.
21. "Regular license" means each type of license issued by the director, except a temporary license.
22. "Sell" or "sale" means a transfer of title or of the right to use by lease, bailment or any other contract, but does not include transfers at wholesale to distributors or dealers.
23. "Speech-language pathology" means the nonmedical and nonsurgical application of principles, methods and procedures of assessment, testing, evaluation and prediction related to speech and language and its disorders and related communication impairments for the nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.
24. "Speech-language pathology assistant" means a person who provides services prescribed in section 36-1940.04 and under the direction and supervision of a speech-language pathologist licensed pursuant to this chapter.
25. "Sponsor" means a person who is licensed pursuant to this chapter and who agrees to train or directly supervise a temporary licensee in the same field of practice.
26. "Temporary licensee" means a person who is licensed under this chapter for a specified period of time under the sponsorship of a person licensed pursuant to this chapter.
27. "Unprofessional conduct" means:
- (a) Obtaining any fee or making any sale by fraud or misrepresentation.
  - (b) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this chapter.
  - (c) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or other representation, however disseminated or published, that is misleading, deceiving, improbable or untruthful.
  - (d) Advertising for sale a particular model, type or kind of product when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type or kind if the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than that advertised.
  - (e) Representing that the professional services or advice of a physician will be used or made available in the selling, fitting, adjustment, maintenance or repair of hearing aids if this is not true, or using the words "doctor", "clinic", "clinical" or like words, abbreviations or symbols while failing to affix the word, term or initials

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"audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or "Sc.D."

- (f) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts or questionable credit standing or by other false representations, or falsely disparaging the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies or services.
- (g) Displaying competitive products in the licensee's show window, shop or advertising in such manner as to falsely disparage such products.
- (h) Representing falsely that competitors are unreliable.
- (i) Quoting prices of competitive products without disclosing that they are not the current prices, or showing, demonstrating or representing competitive models as being current models when they are not current models.
- (j) Imitating or simulating the trademarks, trade names, brands or labels of competitors with the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers.
- (k) Using in the licensee's advertising the name, model name or trademark of a particular manufacturer of hearing aids in such a manner as to imply a relationship with the manufacturer that does not exist, or otherwise to mislead or deceive purchasers or prospective purchasers.
- (l) Using any trade name, corporate name, trademark or other trade designation that has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature or origin of any product of the industry, or of any material used in the product, or that is false, deceptive or misleading in any other material respect.
- (m) Obtaining information concerning the business of a competitor by bribery of an employee or agent of that competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means.
- (n) Giving directly or indirectly, offering to give, or permitting or causing to be given money or anything of value, except miscellaneous advertising items of nominal value, to any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence persons to refrain from dealing in the products of competitors.
- (o) Sharing any profits or sharing any percentage of a licensee's income with any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or to dissuade persons from dealing in products of competitors.
- (p) Failing to comply with existing federal regulations regarding the fitting and dispensing of a hearing aid.
- (q) Conviction of a felony or a misdemeanor that involves moral turpitude.
- (r) Fraudulently obtaining or attempting to obtain a license or a temporary license for the applicant, the licensee or another person.
- (s) Aiding or abetting unlicensed practice.
- (t) Wilfully making or filing a false audiology, speech-language pathology or hearing aid dispenser evaluation.

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- (u) The use of narcotics, alcohol or drugs to the extent that the performance of professional duties is impaired.
- (v) Betraying a professional confidence.
- (w) Any conduct, practice or condition that impairs the ability of the licensee to safely and competently engage in the practice of audiology, speech-language pathology or hearing aid dispensing.
- (x) Providing services or promoting the sale of devices, appliances or products to a person who cannot reasonably be expected to benefit from these services, devices, appliances or products.
- (y) Being disciplined by a licensing or disciplinary authority of any state, territory or district of this country for an act that is grounds for disciplinary action under this chapter.
- (z) Violating any provision of this chapter or failing to comply with rules adopted pursuant to this chapter.
- (aa) Failing to refer an individual for medical evaluation if a condition exists that is amenable to surgical or medical intervention prescribed by the advisory committee and consistent with federal regulations.
- (bb) Practicing **in** a field or area within that licensee's defined scope of practice **in** which the licensee has not either been tested, taken a course leading to a degree, received supervised training, taken a continuing education course or had adequate prior experience.
- (cc) Failing to affix the word, term or initials "audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or "Sc.D." in any sign, written communication or advertising media in which the term "doctor" or the abbreviation "Dr." is used in relation to the audiologist holding a doctoral degree.

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**36-1902. Powers and duties of the director; advisory committee; examining committee**

A. The director shall:

1. Appoint an advisory committee to collaborate with and assist the director and to perform duties as prescribed by this chapter. The director shall inform the advisory committee regarding all disciplinary actions.
2. Supervise and administer qualifying examinations to test the knowledge and proficiency of applicants for a hearing aid dispenser's license.
3. Designate the time and place for holding examinations for a hearing aid dispenser's license.
4. License persons who apply for and pass the examination for a license, and possess all other qualifications required for the practice of fitting and dispensing hearing aids, the practice of audiology and the practice of speech-language pathology.
5. License persons who apply for a license and possess all other qualifications required for licensure as a speech-language pathology assistant.
6. Authorize all disbursements necessary to carry out this chapter.
7. Ensure the public's health and safety by adopting and enforcing qualification standards for licensees and applicants for licensure under this chapter.

B. The director may:

1. Purchase and maintain, or rent, equipment and facilities necessary to carry out the examination of applicants for a license.
2. Issue and renew a license.
3. Deny, suspend, revoke or refuse renewal of a license or file a letter of concern, issue a decree of censure, prescribe probation, impose a civil penalty or restrict or limit the practice of a licensee pursuant to this chapter.
4. Appoint an examining committee to assist in the conduct of the examination of applicants for a hearing aid dispenser's license.
5. Make and publish rules that are not inconsistent with the laws of this state and that are necessary to carry out this chapter.
6. Require the periodic inspection of testing equipment and facilities of persons engaging in the practice of fitting and dispensing hearing aids, audiology and speech-language pathology.
7. Require a licensee to produce customer records of patients involved in complaints on file with the department.

C. The advisory committee appointed pursuant to subsection A, paragraph 1 consists of the director, two physicians licensed under title 32, chapter 13 or 17, one of whom is a specialist in otolaryngology, two licensed audiologists, one of whom dispenses hearing aids, two licensed speech-language pathologists, two public members, one of whom is hearing impaired, one member of the Arizona commission for the deaf and the hard of hearing who is not licensed pursuant to this chapter and two licensed hearing aid dispensers who are not licensed to practice audiology. Committee members who are licensed under this chapter shall have at least five years' experience immediately preceding the appointment in their field of practice in this state.

D. The examining committee authorized pursuant to subsection B, paragraph 4 consists of one otolaryngologist, two licensed dispensing audiologists and two licensed hearing aid dispensers. Committee members who are licensed under this

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chapter shall have at least five years' experience immediately preceding the appointment in their field of practice in this state. The findings of the examining committee shall be advisory to the director.

E. The director shall verify that the audiology licensee has passed a nationally recognized examination approved by the director.

F. The director shall verify that the speech-language pathology licensee has passed a nationally recognized examination approved by the director.

G. The director may recognize a nationally recognized speech-language hearing association or audiology association examination, or both, as an approved examination.

H. The advisory committee shall provide recommendations to the director in the following areas, on which the director shall act within a reasonable period of time:

1. Issuance and renewal of a license.
2. Prescribing disciplinary procedures.
3. Appointment of an examining committee to assist in the conduct of the examination of applicants for a hearing aid dispenser's license.
4. Adopting rules that are not inconsistent with the laws of this state and that are necessary to carry out this chapter.
5. Requiring the periodic inspection of testing equipment and facilities of persons engaging in the practice of fitting and dispensing hearing aids, audiology and speech-language pathology.
6. Requiring a licensee to produce customer records of patients involved in complaints on file with the department of health services.

### **36-1903. Deposit of monies**

The director shall deposit pursuant to sections 35-146 and 35-147, ten per cent of all monies collected pursuant to this chapter in the state general fund and shall deposit the remaining ninety per cent in the health services licensing fund established by section 36-414, except that monies collected from civil penalties imposed pursuant to this chapter shall be deposited in the state general fund.

### **36-1904. Issuance of license; renewal of license; continuing education; military members**

A. The director shall issue a regular license to each applicant who meets the requirements of this chapter. A regular license is valid for two years.

B. A licensee shall renew a regular license every two years on payment of the renewal fee prescribed in section 36-1908. There is a thirty-day grace period after the expiration of a regular license. During this period the licensee may renew a regular license on payment of a late fee in addition to the renewal fee.

C. When renewing a regular license as a hearing aid dispenser, the licensee shall provide proof of having completed at least twenty-four hours of continuing education within the prior twenty-four months. Courses sponsored by a single manufacturer of hearing aids may not satisfy more than eight hours of continuing

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education within the prior twenty-four months. At least eight hours of continuing education must be from courses taught in person that offer a hands-on opportunity for instruction in dispensing-related techniques. Courses on topics that provide a hearing aid dispenser an opportunity to stay current on business or client service practices or trends in the profession or that contribute to the professional or business competence of a hearing aid dispenser may qualify for up to one-third of the continuing education requirement.

D. When renewing a regular license in audiology or in speech-language pathology, the licensee shall provide proof of having completed at least twenty hours of continuing education within the prior twenty-four months. Courses sponsored by a single manufacturer of hearing aids may not satisfy more than eight hours of continuing education within the prior twenty-four months for persons with a license in audiology.

E. The director by rule shall provide standards for continuing education courses required by this section. Educational courses that are developed by professional organizations of hearing aid dispensers, audiologists or speech language pathologists and that are used by those associations to comply with continuing education requirements are deemed to comply with department standards.

F. The director may refuse to renew a regular license for any cause provided in section 36-1934.

G. A person who does not renew a regular license as prescribed by this section shall apply for a new license pursuant to the requirements of this chapter. If an application is received by the director within one year after the expiration date of the license, the applicant is not required to take an examination.

H. A person who reapplies for a regular license issued pursuant to this chapter must provide proof of completion of the continuing education hours prescribed by subsection C or D of this section within the previous twenty-four months before the date of reapplication.

I. A license issued pursuant to this chapter to any member of the Arizona national guard or the United States armed forces reserves does not expire while the member is serving on federal active duty and is extended one hundred eighty days after the member returns from federal active duty if the member, or the legal representative of the member, notifies the director of the federal active duty status of the member. A license issued pursuant to this chapter to any member serving in the regular component of the United States armed forces is extended one hundred eighty days after the date of expiration if the member, or the legal representative of the member, notifies the director of the federal active duty status of the member. If the license is renewed during the applicable extended time period after the member returns from federal active duty, the member is responsible only for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as late fees or delinquency fees. The member, or the legal representative of the member, shall present to the director a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

J. A license issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces does not expire and is extended one hundred eighty

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days after the date the military member is able to perform activities necessary under the license if the member both:

1. Is released from active duty service.
2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license.

### **36-1905. Sponsors; duties**

- A. A sponsor shall directly train and supervise a temporary licensee. The director shall prescribe by rule a reasonable number of hours of training and supervision required. A sponsor may not sponsor more than two temporary licensees at one time.
- B. A sponsor and the temporary licensee are equally liable for violations of this chapter and rules adopted pursuant to this chapter that are committed by the temporary licensee.
- C. A sponsor who violates this section is subject to disciplinary action as prescribed pursuant to section 36-1934.

### **36-1906. Registering place of business with director**

- A. A person who holds a license shall notify the director in writing of the address of the place or places where the person engages in the practice of fitting and dispensing hearing aids, audiology or speech-language pathology and any change of address.
- B. The director shall keep a record of the places of practice of persons who hold licenses. Any notice required to be given by the director to a person who holds a license may be given by mailing it to that person at the address given by that person to the director.

### **36-1907. Practicing without a license; prohibition**

- A. A person shall not engage in the practice of fitting and dispensing hearing aids, audiology or speech-language pathology or display a sign or in any other way advertise or claim to be a hearing aid dispenser, an audiologist or a speech-language pathologist unless the person holds an active license in good standing issued by the director as provided in this chapter.
- B. A person shall not engage in performing the duties of a speech-language pathology assistant or claim to be a speech-language pathology assistant unless the person holds an active license in good standing issued by the director as provided by this chapter.
- C. A licensee shall conspicuously post a license issued pursuant to this chapter in the licensee's office or place of business.

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### **36-1908. Fees**

The director shall prescribe and collect fees from persons who are regulated under this chapter for the following:

1. An original application for a regular or temporary license.
2. An original issuance of a regular or temporary license.
3. An original application for a regular or temporary license if an examination pursuant to section 36-1924 is required.
4. A renewal of a regular or temporary license.
5. An issuance of a duplicate regular or temporary license.
6. A late fee.

### **36-1909. Bill of sale: requirements**

A. A hearing aid dispenser or dispensing audiologist shall deliver a bill of sale to each person supplied with a hearing aid by the hearing aid dispenser or the dispensing audiologist or at that person's order or direction.

B. A bill of sale shall contain the hearing aid dispenser's or the dispensing audiologist's signature and shall show the address of that person's regular place of practice and the number of that person's license, a description of the make and model of the hearing aid and the amount charged. The bill of sale shall also state the serial number and the condition of the hearing aid as to whether it is new, used or rebuilt.

C. A bill of sale shall contain language that verifies that the client has been informed about audio switch technology, including benefits such as increased access to telephones and assistive listening devices. If the hearing device purchased by the client has audio switch technology, the client shall be informed of the proper use of the technology. The client shall be informed that an audio switch is also referred to as a telecoil, t-coil or t-switch.

D. A bill of sale shall contain language that informs the client about the Arizona telecommunications equipment distribution program established by section 36-1947 that provides assistive telecommunications devices to residents of this state who have hearing loss.

### **36-1910. Application of chapter to corporations and other organizations: exemptions**

A. Except as provided in subsection B of this section and to the extent practicable, this chapter applies to corporations, partnerships, trusts, associations or like organizations.

B. Corporations, partnerships, trusts, associations or like organizations that are fitting and dispensing hearing aids are exempt from the qualification and examination requirements of sections 36-1923 and 36-1924, provided they pay the license fee prescribed in section 36-1908 and employ only licensed persons in the over-the-counter or other in-person fitting and dispensing of hearing aids.

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### **36-1921. Persons not affected by chapter**

This chapter does not:

1. Apply to a person while engaged in the practice of recommending hearing aids if such practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public or charitable institution, or a nonprofit organization which is primarily supported by voluntary contributions unless they sell hearing aids.
2. Apply to any person engaging in the practice of measuring human hearing for the purpose of selection of hearing aids provided that the person or the organization that employs that person does not sell hearing aids or hearing aid accessories.
3. Prevent a health care professional who is licensed or certified under title 32 from acting within the scope of that person's license or certificate.
4. Apply to a person who is credentialed by this state as a teacher of the deaf from acting within the scope of those credentials.
5. Apply to a student, intern or trainee pursuing a course of study in audiology or speech-language pathology in a nationally or regionally accredited institution of higher education or training institution if all of the following are true:
  - (a) The activities are part of a planned course of study at that institution.
  - (b) The person is designated by a title that clearly indicates the status appropriate to the person's level of education.
  - (c) The person works under the supervision of a person who is licensed in this state as an audiologist or a speech-language pathologist.
  - (d) Before a person receives services from a student or a temporary licensee, the supervising licensee provides written notification of this fact to the patient.
6. Apply to any person certified by the department of health services for the school hearing screening program.

### **36-1922. Reciprocity**

A. The director may issue a license to a person who is currently licensed in another state or jurisdiction that the director determines meets the minimum licensure requirements of this chapter. The person shall apply for licensure and pay all applicable fees as prescribed by this chapter and shall pass an examination approved by the director in jurisprudence and ethics related to this chapter within six months after initial licensure. The director shall offer the examination at least four times each calendar year.

B. The applicant shall provide information the director determines is necessary to investigate the status of the applicant's current license.

### **36-1923. Hearing aid dispensers: licensure: requirements**

A. An applicant for a hearing aid dispenser license shall pay to the director a nonrefundable application fee and shall show to the satisfaction of the director that the applicant:

1. Is a person of good moral character.

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2. Has an education equivalent to a four-year course in an accredited high school or has continuously engaged in the practice of fitting and dispensing hearing aids during the three years preceding August 11, 1970.

3. Has not had the applicant's license revoked or suspended by a state within the past two years and is presently not ineligible for licensure in any state due to prior revocation or suspension.

B. An applicant for a hearing aid dispenser license who is notified by the director that the applicant has fulfilled the requirements of subsection A of this section shall appear to be examined by written and practical tests as designated by the director in order to demonstrate that the applicant is qualified to practice the fitting and dispensing of hearing aids.

C. The director shall give at least two and not exceeding four examinations of the type described in this section in each calendar year unless there is an insufficient number of applicants for the second annual examination.

### **36-1924. Examination for license**

A. The examination provided for in this article shall consist of:

1. A demonstration of minimal knowledge in the techniques of testing hearing and fitting and evaluating hearing aids.

2. A knowledge of the medical and rehabilitation facilities, for children and adults with hearing disorders, in this state.

3. Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:

(a) Physics.

(b) The human hearing mechanism, including its functions and causes of its disorders.

(c) The function of hearing aids.

4. Practical tests of proficiency in the techniques of taking ear mold impressions and measurement of hearing by pure tone audiometry, including the air, bone and masking methods, and speech audiometry and other skills as they pertain to the candidacy for, selection of and adaptation of hearing aids.

5. A knowledge of rehabilitation and hearing conservation techniques as they relate only to hearing aids and related devices.

B. The examination shall not be constructed to require knowledge or abilities inconsistent with the realistic services of a hearing aid dispenser or with the requirements of sound public health practices.

C. To provide adequate tests of proficiency, the examination requirements provided in this section may be changed when deemed necessary due to technological advances.

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### **36-1926. Temporary license; sponsorship; termination of sponsorship**

A. An applicant who fulfills the requirements of section 36-1923, subsection A may apply to the director for a temporary license.

B. On receiving an application as provided by subsection A of this section, accompanied by an application fee and proof of sponsorship, the director shall issue a temporary license. A temporary license allows the licensee to practice the fitting and dispensing of hearing aids for a twelve-month period.

C. An applicant shall provide proof to the satisfaction of the director that the applicant is or will be supervised and trained for fitting and dispensing activities by a sponsor licensed pursuant to this chapter.

D. A sponsor may terminate sponsorship at any time and for any reason. The director shall not review the reasons for the termination. A temporary license terminates on the date that the director receives notice from the sponsor that the sponsor is terminating sponsorship. This notice shall be accompanied by documentation that the sponsor has notified the licensee of the termination. The director shall prescribe by rule how the sponsor shall document this notification of termination. A person whose license is terminated shall apply for a new temporary license as prescribed by this section and shall not practice until granted a license.

E. A temporary licensee shall take an examination within six months after issuance of a temporary license. If the person takes and fails the examination, the person may renew the temporary license once before the temporary license expires. The person shall take the next examination following the issuance of the renewal license.

F. The director may revoke or suspend a temporary license in the same manner and for the same reasons as prescribed pursuant to section 36-1934.

G. The director may deny an application for a temporary license if the applicant has previously held a temporary license and renewed the temporary license.

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### **36-1934. Denial, revocation or suspension of license; hearings; alternative sanctions**

A. The director may deny, revoke or suspend a license issued under this chapter for any of the following reasons:

1. Conviction of a felony or misdemeanor involving moral turpitude. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or from the judge of that court is sufficient evidence of conviction.
2. Securing a license under this chapter through fraud or deceit.
3. Unprofessional conduct, or incompetence in the conduct of his practice.
4. Using a false name or alias in the practice of his profession.
5. Violating any of the provisions of this chapter.
6. Failing to comply with existing federal regulations regarding the fitting and dispensing of a hearing aid.

B. If the director determines pursuant to a hearing that grounds exist to revoke or suspend a license, the director may do so permanently or for a fixed period of time and may impose conditions as prescribed by rule.

C. The department may deny a license without holding a hearing. After receiving notification of the denial, the applicant may request a hearing to review the denial.

D. The department shall conduct any hearing to revoke or suspend a license or impose a civil penalty under section 36-1939 pursuant to title 41, chapter 6, article 10.

E. Instead of denying, revoking or suspending a license the director may file a letter of concern, issue a decree of censure, prescribe a period of probation or restrict or limit the practice of a licensee.

F. The director shall promptly notify a licensee's employer if the director initiates a disciplinary action against the licensee.

### **36-1936. Unlawful acts**

A person may not:

1. Sell, barter, or offer to sell or barter, a license.
2. Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to engage in the practice of fitting and dispensing hearing aids.
3. Alter materially a license with fraudulent intent.
4. Use or attempt to use as a valid license one which has been purchased, fraudulently obtained, counterfeited or materially altered.
5. Wilfully make a false, material statement in an application or related document for a license or for renewal of a license.

### **36-1937. Injunctive relief**

The director may enforce any provision of this chapter by injunction or by any other appropriate proceeding. No such proceeding shall be barred by any proceeding had or pending pursuant to any other provisions of this chapter, or by the imposition of any fine or term of imprisonment pursuant thereto.

## ATTACHMENT B – ARTICLE 3 STATUTORY AUTHORITIES

### **36-1938.** Violation; classification

Violation of any provision of this chapter is a class 3 misdemeanor.

### **36-1939.** Civil penalties: enforcement

A. The director may impose a civil penalty of not more than five hundred dollars for a violation of this chapter or a rule adopted pursuant to this chapter.

B. The attorney general and the county attorney may bring an action in the name of this state to enforce civil penalties imposed pursuant to this section. Actions shall be brought in the superior court in the county where the violation occurs.

C. The director may impose penalties assessed pursuant to this section in addition to other penalties imposed pursuant to this chapter.

D. All monies collected from civil penalties collected for violation of this chapter or a rule adopted pursuant to this chapter shall be deposited in the state general fund.

## ATTACHMENT B – ARTICLE 3 STATUTORY AUTHORITIES

### **36-1940. Audiology; licensure requirements**

A. A person who wishes to be licensed as an audiologist shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.
2. Submit evidence satisfactory to the director that the applicant has:
  - (a) A doctoral degree with an emphasis in audiology from a nationally or regionally accredited college or university in an accredited program consistent with the standards of this state's universities.
  - (b) Completed supervised clinical rotations in audiology from a nationally or regionally accredited college or university in an accredited program consistent with the standards of this state's universities.
3. Pass an examination pursuant to section 36-1902, subsection G. The applicant must have completed the examination within three years before the date of application for licensure pursuant to this article.
4. Be of good moral character.
5. Not have had a license revoked or suspended by a state within the past two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.

B. A person who has a doctoral degree in audiology and who wishes to be licensed as an audiologist to fit and dispense hearing aids shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.
2. Submit evidence satisfactory to the director that the applicant has:
  - (a) A doctoral degree with an emphasis in audiology from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.
  - (b) Completed supervised clinical rotations in audiology from a nationally or regionally accredited college or a university in an accredited program that is consistent with the standards of this state's universities.
3. Pass an examination pursuant to section 36-1902, subsection G. The applicant must have completed the examination within three years before the date of application for licensure pursuant to this article.
4. Pass an examination approved by the director in jurisprudence and ethics related to this chapter within six months after initial licensure. The director shall offer the examination at least four times each calendar year.
5. Be of good moral character.
6. Not have had a license revoked or suspended by a state within the past two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.

C. A person who wishes to be licensed as an audiologist to fit and dispense hearing aids and who was awarded a master's degree in audiology before December 31, 2007 must:

1. Submit a nonrefundable application fee as prescribed pursuant to section 36-1908.
2. Submit evidence satisfactory to the director that the applicant meets the requirements prescribed in section 36-1940.02, subsection C for a waiver of the educational and clinical rotation requirements of this article.
3. Pass an audiology examination pursuant to section 36-1902, subsection E. The applicant must have completed the examination within three years before the date of application for licensure pursuant to this article unless the applicant is currently

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practicing audiology and meets the audiology examination waiver requirements of section 36-1940.02, subsection D.

4. Pass the hearing aid dispenser's examination pursuant to section 36-1924.
  5. Be of good moral character.
  6. Not have had a license to practice as an audiologist or hearing aid dispenser revoked or suspended by another state within the past two years and not currently be ineligible for licensure in any state because of a prior revocation or suspension.
- D. The director shall adopt rules prescribing criteria for approved postgraduate professional experience.

### **36-1940.01. Speech-language pathologist: licensure requirements**

A. A person who wishes to be licensed as a speech-language pathologist shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.
2. Submit evidence satisfactory to the director that the applicant has:
  - (a) A master's degree in speech-language pathology or the equivalent from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.
  - (b) Completed a supervised clinical practicum in speech-language pathology from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.
  - (c) Completed postgraduate professional experience in the field of speech-language pathology approved by the director.
3. Pass an examination pursuant to section 36-1902, subsection G.
4. Be of good moral character.
5. Not have had a license revoked or suspended by a state within the past two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.

B. A person who wishes to be licensed as a speech-language pathologist whose practice is limited to providing services to pupils under the authority of a local education agency or state supported institution shall:

1. Submit a nonrefundable application fee as provided by section 36-1908.
2. Submit proof of an employee or contractor relationship with a local education agency or a state supported institution.
3. Hold a certificate in speech and language therapy awarded by the state board of education.

C. The director shall adopt rules prescribing criteria for approved postgraduate professional experience.

### **36-1940.02. Waiver of licensure and examination requirements**

A. The advisory committee appointed under section 36-1902 may recommend to the director a waiver of the educational requirements of sections 36-1940 and 36-1940.01 if an applicant submits proof satisfactory to the department that the applicant received professional education in another country equivalent to the education and practicum requirements of this article.

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B. The department shall waive the examination requirements of section 36-1940.01 under either of the following conditions:

1. The applicant presents proof satisfactory to the department that the applicant is currently licensed in a state, district or territory of this country that has standards that are at least equivalent to those of this state.

2. The applicant holds a certificate of clinical competence in speech-language pathology from a nationally recognized speech-language hearing association approved by the department in the field for which the applicant is applying for licensure.

C. The department shall waive the education and clinical rotation requirements of section 36-1940 if an applicant submits proof satisfactory to the director that the applicant either:

1. Is currently licensed in a state that has standards that are at least equivalent to those of this state.

2. Has a master's degree in audiology that was awarded by an accredited program before December 31, 2007 and has completed postgraduate professional experience in audiology as approved by the director.

D. The department shall waive the audiology examination requirements of section 36-1940 if either:

1. The applicant presents proof satisfactory to the department that the applicant is currently licensed and practicing audiology in this state or in another state that has standards that are at least equivalent to those of this state.

2. The applicant presents proof satisfactory to the department that the applicant is currently practicing audiology under the authority and supervision of an agency of the United States government or of another board, agency or department of another state and holds a certificate in audiology from a recognized credentialing body approved by the director.

E. The department shall waive the hearing aid dispensing examination requirements of section 36-1940 if:

1. The applicant presents proof satisfactory to the department that the applicant holds a current license that includes dispensing and that is issued by another state that has standards that are at least equivalent to those of this state.

2. The applicant passes an examination approved by the director in jurisprudence and ethics related to this chapter within six months after initial licensure. The director shall offer the examination at least four times each calendar year.

### **36-1940.03. Temporary licenses**

A. The department shall issue a temporary license to a person who does not meet the professional experience requirement of section 36-1940.01 if the applicant meets the other requirements of that section and:

1. Includes with the application a plan for meeting the postgraduate professional experience.

2. Submits a fee prescribed by section 36-1908.

B. A person may renew a temporary license only once.

C. A person issued a temporary license shall, practice only under the supervision of a person who is fully licensed by this state.

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### **36-1940.04. Speech-language pathologist assistant: licensure requirements: scope of practice: supervision**

A. A person who wishes to be licensed as a speech-language pathologist assistant shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.
2. Submit written evidence satisfactory to the director that the applicant has completed:
  - (a) An approved training program for speech-language pathology assistants or the equivalent from a nationally or regionally accredited college or university that consisted of a minimum of sixty semester credit hours of course work with the following curriculum content:
    - (i) Twenty to forty semester credit hours of general education.
    - (ii) Twenty to forty semester credit hours of speech-language pathology technical course work.
  - (b) A minimum of one hundred hours of clinical interaction that does not include observation, under the supervision of a licensed master's level speech-language pathologist.
3. Be of good moral character.
4. Not have had a license revoked or suspended by a state within the past two years and is not presently ineligible for licensure in any state because of a prior revocation or suspension.

B. The director shall grant a waiver of the requirements for licensure as provided by subsection A of this section until September 1, 2007 to individuals who have performed the functions of a speech-language pathology assistant if the individual:

1. Has completed a minimum of forty semester credit hours of speech-language pathology technical course work.
2. Has satisfactorily completed a minimum of two years of experience as a speech-language pathology assistant under the supervision of a licensed master's level speech-language pathologist.
3. Is of good moral character.
4. Has not had a license revoked or suspended by a state within the past two years and is not presently ineligible for licensure in any state because of a prior revocation or suspension.

C. A speech-language pathology assistant may do the following under the supervision of the licensed speech-language pathologist:

1. Conduct speech and language screenings without interpretation, using screening protocols specified by the supervising speech-language pathologist.
2. Provide direct treatment assistance, including feeding for nutritional purposes to patients, clients or students except for patients, clients or students with dysphagia, identified by the supervising speech-language pathologist by following written treatment plans, individualized education programs, individual support plans or protocols developed by the supervising speech-language pathologist.
3. Document patient, client or student progress toward meeting established objectives as stated in the treatment plan, individual support plan or individualized education program without interpretation of the findings, and report this information to the supervising speech-language pathologist.
4. Assist the speech-language pathologist in the collecting and tallying of data for assessment purposes, without interpretation of the data.

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5. Act as a second-language interpreter during assessments.
6. Assist with informal documentation during an intervention session by collecting and tallying data as directed by the speech-language pathologist, preparing materials and assisting with other clerical duties as specified by the supervising speech-language pathologist.
7. Schedule activities and prepare charts, records, graphs or other displays of data.
8. Perform checks and maintenance of equipment.
9. Participate with the speech-language pathologist in research projects, in-service training and public relations programs.
10. Sign and initial treatment notes for review and co-signature by the supervising speech-language pathologist.

D. A speech-language pathology assistant shall not:

1. Conduct swallowing screening, assessment and intervention protocols, including modified barium swallow studies.
2. Administer standardized or nonstandardized diagnostic tests, formal or informal evaluations or interpret test results.
3. Participate in parent conferences, case conferences or any interdisciplinary team meeting without the presence of the supervising speech-language pathologist, except for individualized education program or individual support plan meetings if the licensed speech pathologist has been excused by the individualized education program team or the individual support plan team.
4. Write, develop or modify a patient's, client's or student's treatment plan, individual support plan or individualized education program in any way.
5. Provide intervention for patients, clients or students without following the treatment plan, individual support plan or individualized education program prepared by the supervising speech-language pathologist.
6. Sign any formal documents, including treatment plans, individual support plans, individualized education programs, reimbursement forms or reports.
7. Select patients, clients or students for services.
8. Discharge patients, clients or students from services.
9. Unless required by law, disclose clinical or confidential information orally or in writing to anyone not designated by the speech-language pathologist.
10. Make a referral for any additional service.
11. Communicate with the patient, client or student or with family or others regarding any aspect of the patient, client or student status without the specific consent of the supervising speech-language pathologist.
12. Claim to be a speech-language pathologist.
13. Write a formal screening, diagnostic, progress or discharge note.
14. Perform any task without the express knowledge and approval of the supervising speech-language pathologist.

E. All services provided by a speech-language pathology assistant shall be performed under the direction and supervision of a speech-language pathologist licensed pursuant to this chapter.

F. A licensed speech-language pathologist who supervises or directs the services provided by a speech-language pathology assistant shall:

1. Have at least two years of full-time professional experience as a licensed speech-language pathologist.

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2. Provide direction and supervision to not more than two full-time or three part-time speech-language pathology assistants at one time.

3. Ensure that the amount and type of supervision and direction provided to a speech-language pathology assistant is consistent with the individual's skills and experience, the needs of the patient, client or student served, the setting in which services are provided and the tasks assigned and provide:

(a) A minimum of twenty per cent direct supervision and ten per cent indirect supervision of all of the time that a speech-language pathology assistant is providing services during the first ninety days of the person's employment.

(b) Subsequent to the first ninety days of a speech-language pathology assistant's employment, a minimum of ten per cent direct supervision and ten per cent indirect supervision of all of the time a speech-language pathologist assistant is providing service.

4. Inform a patient, client or student when the services of a speech-language pathology assistant are being provided.

5. Document all periods of direct and indirect supervision provided to a speech-language pathology assistant.

G. If more than one speech-language pathologist provides supervision to a speech-language pathology assistant, one of the speech-language pathologists shall be designated as the primary supervisor who is responsible for coordinating any supervision provided by other speech-language pathologists.