INDUSTRIAL COMMISSION OF ARIZONA (R-16-0601)
Title 20, Chapter 5, Article 13, Treatment Guidelines

New Article:	Article 13
New Section:	R20-5-1301
	R20-5-1302
	R20-5-1303
	R20-5-1304
	R20-5-1305
	R20-5-1306
	R20-5-1307
	R20-5-1308
	R20-5-1309
	R20-5-1310
	R20-5-1311
	R20-5-1312

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: E-1**

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

FROM: Chris Kleminich, Staff Attorney

DATE: May 20, 2016

SUBJECT: **INDUSTRIAL COMMISSION OF ARIZONA (R-16-0601)**
Title 20, Chapter 5, Article 13, Treatment Guidelines

New Article: Article 13

New Section: R20-5-1301; R20-5-1302; R20-5-1303; R20-5-1304; R20-5-1305; R20-5-1306; R20-5-1307; R20-5-1308; R20-5-1309; R20-5-1310; R20-5-1311; R20-5-1312

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

The purpose of the Industrial Commission of Arizona (Commission) is to "promote the health, safety and welfare of employees." Laws 2006, Ch. 15, § 3.

This rulemaking adds one new article and twelve new rules to A.A.C. Title 20, Chapter 5. The Commission is making these rules to comply with a statutory directive. A.R.S. § 23-1062.03 requires the Commission to develop and implement a process for the use of evidence-based medical treatment guidelines to treat injured workers within Arizona's workers compensation system. The Commission believes that the rules are intended to improve the quality and outcomes of medical care, and to improve the efficiency and effectiveness of the process under which medical care is provided to injured workers.

Article Contents, Including the Subject Matter of Each Rule Affected

Article 13 contains twelve rules, all of which are newly made by this rulemaking, that relate to adoption and applicability; definitions; provider requests for preauthorization; payer denials of requests for preauthorization; payer denials of payments for provided treatment or services; payer reversals of decisions to deny treatment or services; payer decisions, in whole or

in part; failure to comply with required time limits; payer decisions on requests for preauthorization; payer reconsideration on requests for preauthorization; administrative review by Commission; and hearing process.

Year that Each Rule was Last Amended or Newly Made

All of the rules will be newly made by this rulemaking.

Proposed Action

The Commission is adding twelve new rules to A.A.C. Title 20, Chapter 5. Below is a brief summary of each rule.

- Section 1301 delineates the extent to which the Work Loss Data Institute's Official Disability Guidelines – Treatment in Workers Compensation (ODG) applies as the standard reference for evidence-based medicine used in treating injured workers within the state's workers compensation system.
- Section 1302 lays out definitions for the article.
- Section 1303 sets forth the information that a provider must include if it submits a request for preauthorization in writing.
- Section 1304 sets forth reasons as to why a payer may not deny a request for preauthorization.
- Section 1305 sets forth reasons as to why a payer may not deny payment for provided treatment or services.
- Section 1306 allows a payer to reverse its decision to deny treatment or services at any time during the process.
- Section 1307 allows a payer to issue a decision approving or denying a request for preauthorization in whole, or in part.
- Section 1308 clarifies that a payer's failure to comply with the required time limits of this process may be considered unreasonable delay.
- Section 1309 sets forth the process by which a payer makes its decision on a request for preauthorization.
- Section 1310 sets forth the process by which a payer reconsiders its decision on a request for preauthorization.
- Section 1311 sets forth the process for administrative review of requests for medical treatment, or services related to the management of chronic pain and the use of opioids for all stages of pain management, by the Commission.
- Section 1312 sets forth the process for the Fast Track Administrative Law Judge Dispute Resolution Program, which may be used if all parties agree to participate.

Summary of Reasons for the Proposed Action

The Commission is implementing A.R.S. § 23-1062.03, which requires the Commission to develop and implement a process for the use of evidence-based medical treatment guidelines to treat injured workers within Arizona's workers compensation system.

Exemption or Request and Approval for Exception from the Moratorium

The Commission received an exception from Executive Order 2015-01 on March 6, 2015.

Substantive or Procedural Concerns

None.

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

Yes. The Commission cites to A.R.S. § 23-107(A)(1) as general authority for the rules, under which the Commission has full power, jurisdiction and authority to formulate and adopt rules and regulations for effecting the purposes of this article [Title 23, Labor, Chapter 1, Industrial Commission, Article 1, In General]."

The Commission cites to A.R.S. § 23-1062.03 as specific authority for the rules. A.R.S. § 23-1062.03, in relevant part, requires the Commission to "develop and implement a process for the use of evidence-based medical treatment guidelines, where appropriate, to treat injured workers no later than December 31, 2014."

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rules are generally clear, concise, and understandable.

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

Yes. The Commission indicates that it received written comments on the rulemaking from Property Casualty Insurers (PCI), the Arizona Association of Lawyers for Injured Workers (AALIW), Healthesystems, CopperPoint Mutual Insurance Company, and the Arizona Self-Insurers Association (ASIA). In addition, the Commission indicates that representatives from CopperPoint Mutual Insurance, AALIW, and Coventry/CompPharma spoke at an oral proceeding on the rules on December 15, 2015.

On pages 6-19 of the Notice of Final Rulemaking, the Commission summarizes the comments received, and provides responses to those comments. Staff believes that the Commission has adequately addressed, and responded to, comments on the proposed rules.

4. 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. Prompted by comments from Council staff and the public, the Commission has made grammatical, formatting, and consistency changes throughout the rules.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

No. The Commission indicates that it did not review or rely on any study for this rulemaking.

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

No. The Commission indicates that no federal laws directly relate to this rulemaking.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

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

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

No. The rules do not establish a new fee. The rules do impose potential costs on medical providers, insurance carriers, self-insured employers, attorneys, and other participants in the workers compensation system. All participants will use Official Disability Guidelines (ODG) published by the Work Loss Data Institute. To access the ODG, participants may purchase an annual subscription that can range in cost from $249 to $599. Participants who do not purchase a subscription will be able access the ODG, for no cost, at dedicated computer workstations that will be located at the Commission's office.

9. Conclusion

The Commission requests an effective date of October 1, 2016. This effective date is necessary to allow the Commission to complete the infrastructure needed to apply the new rules. This analyst recommends approval of the rules.

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: E-1**

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

FROM: GRRC Economic Team

DATE: May 20, 2016

SUBJECT: **INDUSTRIAL COMMISSION OF ARIZONA (R-16-0601)**
Title 20, Chapter 5, Article 13, Treatment Guidelines

New Article: Article 13

New Section: R20-5-1301; R20-5-1302; R20-5-1303; R20-5-1304; R20-5-1305; R20-5-1306; R20-5-1307; R20-5-1308; R20-5-1309; R20-5-1310; R20-5-1311; R20-5-1312

I reviewed the economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

GRRC Economist Comments

In this rulemaking, the Commission is establishing new rules which outline the adoption of the Official Disability Guidelines (ODG) as evidence-based guidelines for chronic pain and opioid treatment. By adopting and referencing the most recent edition (at the time of treatment), and continuously updated Official Disability Guidelines, the Commission can ensure the latest available medical evidence is used in making medical treatment decisions for injured workers. The treatment guidelines are evidence-based, scientifically valid and outcome-focused, and are designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care.

In 2012, the Legislature passed HB 2368 that required the Commission to develop and implement a process for the use of treatment guidelines. In 2014, the Commission created the Medical Resource Office (MRO) to provide administrative review and oversight of the implementation of a process for the use of medical treatment guidelines, A.R.S. § 23-1062.03.

The Commission has certified that the Joint Legislative Budget Committee has not been notified because the number of new full-time employees necessary to implement and enforce the rule is zero. Notice of new FTEs is required by A.R.S. § 41-1055(B)(3)(a).

1. **Costs and Benefits for:**

a. The implementing agency:

The MRO office has a full-time Program Manager who was promoted to this role from within the Agency. Two full-time employees (FTE's) to implement and enforce the rules will be hired. The two FTE positions are positions that existed in the Agency and became vacant and available for use by the MRO office. These two FTE positions are accounted for in the current 2016 Industrial Commission budget. The annual cost for three full-time employees is approximately $217,000 in 2016 dollars.

An automated electronic system has been developed by an outside vendor for the Commission costing $190,300. The estimated annual maintenance and support cost for the automated electronic portal is $38,000. As of March 2016, the cost for annual updates of the ICD-10 and CPT digital Codes and books used to support the electronic process is $1,300.

The Commission currently has eleven licensed ODG users, one licensed user in the MRO office, and 10 users in the Special Fund Division and Director's Office costing $249 per license in 2016. The Commission expects to add two ODG licenses for MRO staff in 2017 at $249 per license for 2017 annual total cost of approximately $3250.00.

b. Political subdivisions:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

c. Businesses:

No businesses are directly affected by the rulemaking. Costs related to workers' compensation insurance may be affected, however.

d. Small businesses:

The rulemaking does not directly affect small businesses.

e. Consumers directly affected by the rulemaking:

Injured employees should benefit from the adoption of rules for using evidence-based medical treatment guidelines. The use of evidence-based medical treatment guidelines should improve the quality and outcomes of medical care, and improve the efficiency and effectiveness of the process under which that medical care is provided to the injured employee.

2. Do the probable benefits outweigh the probable costs?

Based on the information provided, the Commission indicates that the benefits of the rules outweigh the costs.

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

An analysis was not submitted, because the Commission estimated that there will be no economic impact to small businesses.

4. The probable effect on state revenues:

The Commission states that the rulemaking will have no direct effect on state revenues.

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

The Director's Advisory Committee for Evidence-Based Medicine Treatment Guidelines that included physicians, attorneys and payer stakeholders considered a number of evidence-based medicine treatment guidelines. The Advisory Committee carefully considered the costs and benefits associated with each treatment guideline studied and recommended the Industrial Commission adopt ODG as the least intrusive, most flexible and most cost effective application.

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No analysis was submitted that compares the rule's impact of the competiveness of businesses in this state to the impact on businesses in other states.

7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.

The Commission indicates that no outside data or studies were used in the development of the rules.

8. Conclusion:

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the rules be approved.

THE INDUSTRIAL COMMISSION OF ARIZONA

LEGAL DIVISION

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JAMES ASHLEY, DIRECTOR

April 4, 2016

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

Re: A.A.C. Title 20, Chapter 5, Article 13 (New) Treatment Guidelines

Dear Ms. Ong:

On behalf of the Industrial Commission of Arizona (Commission), I request that the Governor's Regulatory Review Council (Council) approve new rules relating to medical treatment of injured workers within the context of Arizona's workers' compensation system. Pursuant to R1-6-201(A)(1), the Commission provides the following information regarding the rules:

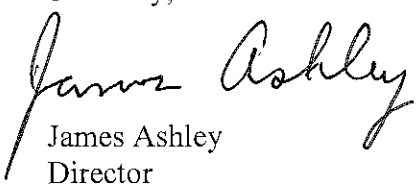
a. Close of record date: December 15, 2015
b. The rulemaking activity does not relate to a five-year-review report. The Commission is undertaking the rulemaking to implement A.R.S. § 23-1062.03.
c. The rules do not establish a new fee.
d. The rules do not contain a fee increase.
e. The Commission is requesting an October 1, 2016 effective date for the rules.
f. The Commission did not rely on a study for justification of the rules.
g. The Commission anticipates that it will be necessary to hire two new full-time employees to implement the program. These employees have been accounted for in the Commission's budgetary request to JLBC.
h. The following documents are included for the Council's review:

Request for Approval of Rulemaking
Approval of Rulemaking
Notice of Final Rulemaking
Economic Impact Statement
Written Comments
Oral Proceeding Transcript

General and Specific Statutes Authorizing the Rules
Definitions

Thank you for your consideration of these rules. Should you have any questions regarding the rules, please contact Andrew Wade, Chief Counsel, at 602-542-5781.

Sincerely,



James Ashley
Director

SJC/kh
Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

1.	**Articles, Parts, and Sections Affected (as applicable)**	**Rulemaking Action**
	Article 13	New Article
	R20-5-1301	New Section
	R20-5-1302	New Section
	R20-5-1303	New Section
	R20-5-1304	New Section
	R20-5-1305	New Section
	R20-5-1306	New Section
	R20-5-1307	New Section
	R20-5-1308	New Section
	R20-5-1309	New Section
	R20-5-1310	New Section
	R20-5-1311	New Section
	R20-5-1312	New Section

2. Citations to agency's statutory rulemaking authority to include the authorizing statute and the implementing statute:

Authorizing statute: A.R.S. § 23-107(A)(1)

Implementing statute: A.R.S. § 23-1062.03

3. The effective date of the rule:

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

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 Industrial Commission requests the new rules become effective on October 1, 2016. An effective date later than the 60 day effective date specified in A.R.S. § 41-1032(A) is necessary to allow the Commission to complete the infrastructure needed to apply the new rules.

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: 21 A.A.R. 2475, October 23, 2015

Notice of Proposed Rulemaking: 21 A.A.R. 2739, November 13, 2015

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

Name:	Jacqueline Kurth, Manager, Medical Resource Office
Address:	Industrial Commission of Arizona
	800 West Washington Street, Suite 305
	Phoenix, Arizona 85007
Telephone:	602-542-6731
Fax:	602-542-4797
E-mail:	Jacqueline.Kurth@azica.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 § 23-1062.03 requires the Industrial Commission of Arizona to develop and implement a process for the use of evidence-based medical treatment guidelines to treat injured workers within the context of Arizona's workers' compensation system. The Industrial Commission is making these rules to comply with that legislative directive. These rules, which implement a process for the use of treatment guidelines, are intended to improve the quality and outcomes of medical care, and to improve the efficiency and effectiveness of the process under which that medical care is provided to injured workers.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to 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:

Not applicable

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

Not applicable

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

In accordance with the statutory mandate, the Industrial Commission has adopted the Work Loss Data Institute's *Official Disability Guidelines - Treatment in Workers Compensation* (ODG) as the standard reference for evidence-based medicine used in treating injured workers within the context of Arizona's workers' compensation system. The use of the ODG treatment guidelines is expected to reduce workers' compensation costs. For example, the impact resulting from the adoption of a closed drug formulary alone, part of the ODG treatment guidelines, is estimated to reduce overall workers' compensation costs in Arizona by $23 million during the six month period between July 1 and December 31, 2016. This component of the estimated impact used an assumed effective date for Article 13 of July 1, 2016. Even though the actual effective date is anticipated to be October 1, 2016, the estimated impact for six months is still considered valid to illustrate the impact of the use of treatment guidelines.

There will be some costs incurred by the participants in the workers' compensation system. Participants include medical providers, payers (insurance carriers and self-insured employers), attorneys, and the Industrial Commission of Arizona. All participants will use evidence-based medical treatment guidelines published by the Work Loss Data Institute and referred to as the ODG. To access the ODG

guidelines, participants may purchase an annual subscription and the cost to purchase an annual subscription in 2016 ranges from $249.00 to $599.00 or participants may access the ODG using dedicated computer workstations established at the Industrial Commission at no cost to the user. The 2016 cost to the Commission for each station will be $325.00. The Industrial Commission has not yet determined how many workstations will be made available because the demand for such access cannot be accurately predicted.

The administrative review process may result in a peer review that will be conducted by a third party vendor who must be URAC accredited. URAC was originally incorporated under the name Utilization Review Accreditation Commission. That name was shortened to the acronym URAC in 1996 when it began accrediting other types of organizations such as health plans, pharmacies, and provider organizations. At present, URAC accreditations, certifications, and designations address health care management, health care operations, health plans, pharmacy quality management, and providers. The administrative review process and peer review should reduce delays in providing employees with reasonably required medical treatment, improve the processing of their workers' compensation claims, and reduce litigation time and cost. The cost for the peer review will be paid by the payer and the 2016 cost for a peer review ranges from $250.00 to $550.00 per peer review. The precise cost will depend on the complexity of the proposed medical treatment and the number of medical records involved in the peer review.

The Industrial Commission has created a Medical Resource Office (MRO) to administer the Commission's role in the administrative review process. The MRO will require an additional two staff and a program manager for a total number of three new "full time equivalent" positions. To support an efficient preauthorization process, the Commission is developing an electronic system and the estimated total cost to complete the system is $190,300.00.

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

No substantial substantive changes have been made to the rules. Non-substantive grammatical, formatting, and consistency changes have been made throughout the rules. To reduce the use of "statements" in Article 13, and because describing what is included does not require also describing what is not included, the second paragraph of Rule 1301(A) has been deleted. Rule 1301(B) specifies that the guidelines shall apply to the management of chronic pain and the use of opioids in all stages of pain management and it is not necessary to include both the words "apply to" and "and are mandatory in." Accordingly, the words "and are mandatory in" have been deleted from Rule 1301(B).

As published in the Notice of Proposed Rulemaking, Rule 1310 contained two subsections "B." The second subsection "B" has been relettered to "F." The words "or its contractor" were inadvertently omitted from Rule 1311(H) and (K) (although properly included in Rules 1311(G), 1311(I)(2)). In the definition of "Peer Review" in Rule 1302, "11(I)" was inadvertently omitted from the citation to R20-5-1311(I) and has been added. References in Rule 1304, 1309 and 1310 to the "administrative review" process in Rule 1312 have been changed to reflect that the process is actually Rule 1311.

As a result of stakeholder comments, the definition of "chronic pain" has been clarified to avoid potential confusion. As published in the Notice of Proposed Rulemaking, Rule 1301(B) explained that: "For purposes of this process, chronic pain shall be defined by the guidelines." Rule 1302 also included a definition of chronic pain: "means any pain that persists beyond the anticipated time of healing." Because the guidelines contain a definition for chronic pain, it is not necessary to also include a definition in Rule 1302. Accordingly, the superfluous inclusion of a definition of chronic pain in Rule 1302 has been deleted. The incorrect reference to Rule 1301(F) in the definition of "Applicability" in Rule 1302 has been corrected to Rule 1301(B) and (C). The incorrect reference to Rule 1314(B) in the definition of "Fast Track ALJ Dispute Resolution Program" in Rule 1302 has been corrected to 1312(B).

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

The Commission received five written comments related to the proposed rulemaking from the following: Property Casualty Insurers (PCI), Arizona Association of Lawyers for Injured Workers (AALIW), Healthesystems, CopperPoint Mutual Insurance Company, and the Arizona Self-Insurers Association (ASIA). The Industrial Commission held an oral proceeding regarding the proposed rules on December 15, 2015. Representatives of three stakeholders spoke at the Oral Proceeding. Those three stakeholders were, CopperPoint Mutual Insurance, AALIW, and Coventry/CompPharma. The comments pertaining to each rule are addressed in order:

Rule 1301 Adoption and Applicability of the Article

Comment: Property Casualty Insurers (PCI) supports the adoption of the *Official Disability Guidelines* (ODG) as evidence-based guidelines for chronic pain and opioid treatment. PCI has stated that the adoption of the ODG should not be limited to the management of chronic pain and the use of opioids for all stages of pain management. PCI would like the Industrial Commission of Arizona (ICA) to utilize ODG for all medical care delivered under the Arizona Workers Compensation Act. Written comments from PCI 12/01/2015.

Response: A.R.S. § 23-1062.03 directs the Commission to develop and implement a process for the use of evidence-based medical treatment guidelines, where appropriate, to treat injured workers. In compliance with the statutory directive, the Commission has already adopted the ODG. Although the Commission has specified that the use of the ODG is limited to management of chronic pain and the use of opioids for all stages of pain management, the Commission recognizes that the application of the use of the ODG to treat injured workers may be expanded and Rule 1301(C) provides for this possibility.

Rule 1301(B) Adoption and Applicability of the Article

Comment: AALIW suggests the rule read, "Until further action of the Commission, the guidelines shall apply only to and are mandatory only in the

management of chronic pain and the use of opioids for chronic pain management." AALIW would like to change the language in the proposed rule so that the rule would apply the guidelines only to management of chronic pain and the use of opioids for chronic pain management as opposed to applying the use of opioids to all stages of pain management. Written comments from AALIW 12/11/2015 were the same comments made at Oral Proceeding 12/15/2015.

Response: The Commission's adoption of the ODG and the initial scope of the use of the ODG results from consensus recommendations produced by the Advisory Committee for Evidence Based Medical Treatment Guidelines (Director's Advisory Committee). This committee of community stakeholders included medical doctors, attorneys who represent injured workers, payers, attorneys who represent payers and Industrial Commission staff. The Commission has adopted the consensus recommendations. One of those recommendations was for the ODG to initially apply to the management of chronic pain and the use of opioids for all stages of pain management. The Commission continues to consider this appropriate.

Comment: Healthesystems commented that the rules should be mandatory for the management of treatment of chronic pain and the use of opioids for all stages of pain management, and presumably "all stages" includes the initial onset. This would imply that the entire ODG would be applicable to any injury where there is a pain management component. Managing pain often involves prescribing medications that are not opioids but generate requests for preauthorization and may not be appropriate for an injured worker's treatment plan. For this reason, whether Appendix A, closed formulary, is included should be clarified. Written comments from Healthesystems 12/14/2015.

Arizona Self-Insured Association (ASIA) views limiting the rules to chronic pain as an important first step, and continue to support the expansion of the rules to all injuries so all claims, injured workers, and employers are treated equally under the rules. Written comments from ASIA 12/15/2015.

Response: The Commission's adoption of the ODG and the initial scope of the use of the ODG results from consensus recommendations produced by the Director's Advisory Committee. The consensus recommendations did not include the use of the word "only" and the Commission does not consider it necessary nor desirable to use the word "only" in Rule 1301(B) as doing so may create confusion between Rule 1301(B) and 1301(C). Likewise, the Commission's adoption of the consensus recommendation was to apply the ODG to the use of opioids for all stages of pain management. Appendix A is part of the ODG treatment guidelines.

Rule 1301(C) Adoption and Applicability of the Article

Comment: AALIW would like the Commission to limit the applicability of the treatment guidelines for at least two years after implementation of these rules. "The Commission may modify or change the applicability of the guidelines as described in subsection B if the Commission determines that modification or changing the applicability of the guidelines 1) will improve medical treatment for injured workers, 2) will make treatment and claims processing more efficient and cost effective, and 3) where the guidelines provide adequate coverage of the body parts or conditions." AALIW also commented that a sentence should be added to the end of Rule 1301(C) as follows: "Such action may only be taken after sufficient time has passed to evaluate the effect of the current applicability on the provision of appropriate medical care. Sufficient time shall be at least two (2) years after the implementation of these rules."

Response: Neither the Director's Advisory Committee's consensus recommendations nor the Commission's adoption of the consensus recommendations include any time period limitation. Rule 1301(C) requires the Commission provide the public with the opportunity to comment and hold a public hearing before the Commission may take action to modify or change the applicability of the guidelines.

1302 Definitions

Comment: AALIW believes the definition of "Chronic Pain" as "any pain that persists beyond the anticipated time of healing" is extremely vague and subject to

a wide range of interpretation. To add solidity to the definition, AALIW suggests the following change be made to the definition of Chronic Pain: "intermittent in addition to continuous, namely that it has persisted for at least three months and has resulted in pain on at least half the days in the past six months." Additionally, AALIW suggests adding "has persisted for at least three months after the original injury or any surgery" to make clearer that the issue addressed is chronic pain rather than acute pain.

Response: Both the Director's Advisory Committee and the Commission, when it adopted the Committee's recommendations, intended for the definition of chronic pain to be the definition as contained in the guidelines (as noted in Rule 1301(A)). To avoid any confusion with the unnecessary definition of chronic pain that was in Rule 1302, that definition has been deleted.

Rule 1303 et seq. Provider Request for Preauthorization

Comment: PCI comment: It is critical that the preauthorization process be utilized to ensure that there is proper medical basis for departing from the guidelines before the injured worker receives that treatment in order to avoid unnecessary chemical dependency or addiction. The legislative directive to the Commission found in A.R.S. § 23-1062.03 is broad enough to include a mandatory preauthorization process adopted by the Commission for the use of evidence-based medical treatment guidelines. The rules should include the following: "No preauthorization is required to ensure payment for reasonably required medical treatment or services supported by the adopted guidelines. Preauthorization is required for all medical treatment or services that are not supported by the adopted guidelines or are not addressed by the adopted guidelines."

Response: Assuming the Commission has the authority to impose a mandatory preauthorization process, the Commission has elected not to do so at this time.

Rule 1304 Payer Denial of Request for Preauthorization

Comment: AALIW states that nothing in these new rules overcomes the requirements of A.R.S. § 23-1062.02(F), which requires that, when there is a conflict on the need for opioids, the payer is to provide drug rehabilitation and

detoxification treatment. In the event of a dispute regarding the need for rehabilitation and detoxification, the payer must continue to provide the opioids until a determination is made after a hearing by an administrative law judge.

Response: The rules do not override A.R.S. § 23-1062.02(F).

Rule 1304(B) Payer Denial of Request for Preauthorization

Comment: AALIW believes this rule is at odds with Rule 1309(B) in that it requires a payer to provide a great deal of information if they deny preauthorization for treatment that is supported by the guidelines, but Rule 1309(B) allows them to simply ignore the request.

Response: This comment mischaracterizes Rule 1309(B) as allowing a payer to "ignore" a request. The rule provides the payer with a time-frame for communicating its decision regarding a request for preauthorization and if a payer does not communicate its decision within the specified time-frame, provides the provider and injured employee with the ability to seek administrative review.

Rule 1309(D) Payer Decision of Request for Preauthorization

Comment: AALIW suggest changes to eliminate "final" IME as they believe the provider and the applicant should be privy to all of the doctor's reports as they become available. The following is the suggested change to the rule: "If, no later than 10 business days after a request for preauthorization has been received, a payer provides notice to the provider that an IME has been requested under R20-5-114, then the payer's decision on a request for preauthorization shall be issued no later than 10 business days after the IME report has been received by the payer. The payer shall provide a copy of the IME report to the provider immediately upon receipt of the IME report. The IME must be scheduled to occur within 45 days of the receipt of the request for preauthorization. The report shall be provided within 10 days of the examination."

Response: The comment appears to be directed at obtaining preliminary written communications from IME doctors even in those circumstances where the preliminary "report" has no impact on the decision. This may occur, for example, when an IME doctor communicates to the payer that an IME clinical examination

has been completed but the doctor is waiting for results from an MRI before rendering an opinion. In those circumstances where the IME doctor agrees with the attending physician and preauthorization is approved, requiring the payer to supply all the preliminary written communications would not appear to be an efficient and effective use of resources. Given that the preauthorization process is intended to be an efficient and effective process with minimal extraneous requirements, it does not appear appropriate to require a payer to supply this type of written communication as part of the preauthorization process. The rules do not have any impact on the parties' ability to obtain such medical records during the course of discovery should a workers' compensation claim involve litigation.

Rule 1309(H)(6)(c) Payer Decision of Request for Preauthorization

Comment: AALIW suggest adding "the applicant or their representative," to the sentence that begins "The provider shall file this request . . ." so the beginning of the sentence would read: "The provider, the applicant or their representative, shall file this request . . . ."

Response: The process described in Rule 1309(H)(6)(c) is intended to provide a process for a provider to request the payer review a decision that is issued without an IME and the intent was to limit the initiation of this particular process to the provider.

Rule 1309(I) Payer Decision of Request for Preauthorization

Comment: AALIW suggest adding "or their representative" to the following sentence: "A payer shall provide a copy of its written decision to deny treatment or services to the injured employee." so it would read: "A payer shall provide a copy of its written decision to deny treatment or services to the injured employee or their representative."

Response: It is a common practice for payers to communicate with attorneys, rather than directly with the injured employee, in those circumstances where an injured employee is represented by an attorney and the attorney has notified the payer of the representation and has requested that the payer communicate with the attorney. Because it is a common practice, payers are expected to continue to

communicate with attorneys and it does not appear necessary to include such a requirement in Rule 1309(I).

Additional Response: Under existing rules, A.A.C. R20-5-102 and A.A.C. R20-5-158, an individual authorized by law to act on behalf of an injured employee who has provided written notice of this authorization to the Commission must be served on all awards, decisions, orders, notices, documents or other matters as required by law. While it does not appear necessary to include additional language in Rule 1309(I), the Commission agrees that adding "or authorized representative" to the end of this subsection would be a non-substantive change.

Rule 1310(C) Payer Reconsideration of Request for Preauthorization

Comment: AALIW suggest changing "Final IME" to "IME" and recommends an additional two sentences be added to the proposed rule as follows: "If, no later than 10 business days after a request for reconsideration has been received, a payer provides notice to the provider that an IME has been requested under R20-5-114, then the payer's decision on a request for reconsideration shall be issued no later than 10 business days after the IME report has been received by the payer. The payer shall provide a copy of the IME report to the provider immediately upon receipt of the IME report. The IME must be scheduled within 45 days of receipt of the request for preauthorization. The report shall be provided within 10 days of the examination."

Response: The rule, as drafted, adequately describes the process.

Additional Response: If a preliminary IME report provides sufficient information for a payer to make a decision regarding preauthorization, then the payer should notify the medical provider and the injured employee of the preauthorization decision within 10 business days from the receipt of the preliminary report. However, it is not uncommon for IME physicians to request additional information, including diagnostic testing, prior to finalizing their IME reports which can result in different opinions and recommendations than those set forth in preliminary reports. Therefore, it is recommended that the preauthorization decision be communicated to the medical provider and the injured employee within 10 business days from the receipt of the final IME report unless the preliminary IME report

provides the payer with sufficient information to make a decision regarding a preauthorization request.

Rule 1310(B) Payer Reconsideration of Request for Preauthorization

Comment: AALIW identified a possible typographical error in that the second subsection identified as "B" in Rule 1310 should be "F." In 1310(E)(6)(a), AALIW suggest adding "the applicant or their representative" to the sentence that begins "The provider shall file this request . . . ." so the sentence would read: "The provider, the applicant or their representative, shall file this request. . . ."

Response: The second use of "B" is a typographical error and has been corrected. In those circumstances where an injured employee is represented by an attorney, that attorney may submit a request for administrative review on behalf of the injured employee.

Rule 1311(A) Administrative Review by Commission

Comment: AALIW recommends restricting application of the rule to chronic pain management and to not apply the rule to the use of opioids to all stages of pain management. AALIW suggest making the following changes to the rule: "Until further action of the Commission under R20-5-1301 (C), administrative review under this Article is limited to requests for medical treatment or services related to the management of chronic pain or the use of opioids for chronic pain management."

Response: The intent is for the ODG treatment guidelines to apply to the use of opioids for all stages of pain management.

Rule 1311(I)(1) Administrative Review by Commission

Comment: AALIW recommends changes to the requirements for the individual conducting the peer review from performing patient care for a minimum of 8 hours per week in one of the five preceding years to at least three of the five preceding years. The recommended changes are as follows: "Hold an active, unrestricted license or certification to practice medicine or health profession during the 5 preceding years. For purposes of this subsection, "active practice" means

performing patient care for a minimum of 8 hours per week in at least three of the five preceding years;"

Response: The suggested amendment imposes an unnecessary restriction on those physicians who may perform peer reviews. As drafted, the rule provides for an appropriate practice requirement.

General Comments:

The following general comments, A through E, were received from Healthesystems 12/14/2015;

Comment: A. Scope and Applicability of the ODG and Appendix A; Closed Formulary. Review of the draft is unclear as to the applicability of the ODG Appendix A, closed formulary. If the intent is to set a standard of care for all injury types where pain management is a component of care, then the ODG could be broadly applied to all claims and all injury types where the patient's symptoms include acute or chronic pain.

Response: The Commission adopted the ODG which includes Appendix A, ODG Workers' Compensation Drug Formulary for the management of chronic pain and the use of opiates for all stages of pain management.

Comment: B. How Pharmacy Benefit Managers Factor into the Process. Payers use pharmacy benefit managers (PBM) to identify medications which are appropriate for additional screening. Pharmacies are equipped to communicate in real time with payers through the payers' PBMs. The entire transaction from pharmacist to payer for approval response takes a fraction of a second to complete. Some medications, including opioids and non-opioid drug classes cannot be immediately substantiated as casually related or appropriate by the available medical evidence. This may cause authorization to take longer, but most requests take only a few minutes or hours, not days, to get a payer decision.

Comment: C. This real time connectivity between the pharmacy and the PBM eliminates the need for paper forms being sent back and forth between these entities. Most pharmacies and PBMs are connected via electronic "switches "using nationally adopted standardized formats. Pharmacists should not be required to use

the MRO-1 Preauthorization Form as paper forms are rarely used by pharmacists. Healthesystems recommends consolidating the MRO-1 Form and the MRO-2 Form into a single form, where the payer can respond on the bottom of the request.

Response: The Medical Resource Office (MRO) is developing an electronic system for those who wish to request preauthorization. The MRO process is not intended to replace or displace forms that providers may use to communicate with vendors (such as PBMs), with other providers, or with payers.

Additional Response: Use of the MRO-1 Request for Preauthorization Form is to be used by medical providers (prescribers) and payers and is not intended for use by pharmacies and PBMs.

Comment: D. Commission education and support for the community. Healthesystems recommends the Commission provide educational support to providers, payers and the injured worker community. Training may include classroom, online webinars or web based resources as well as Frequently Asked Questions (FAQs).

Response: The Industrial Commission has made training available to the public on how to use the ODG treatment guidelines by offering multiple workshops at the Commission's Annual Claims Seminar held in August 2015 and the Commission's website, www.azica.gov, has links to ODG webinars, FAQs about ODG and MRO forms for participation in the treatment guidelines process. When the Rules are finalized, the Commission will offer training workshops online and at the Commission on how to use the treatment guidelines and the process for administrative review.

Comment: E. Applicability of the formulary. Healthesystems suggest clarification as to the applicability of the formulary within the rule. If Appendix A closed formulary of ODG is not adopted, then we suggest it be specifically excluded as per the other exclusions in Rule 1301. If Appendix A closed formulary is adopted, in part for opioids only, or in whole, we suggest the Commission also incorporate language which specifies that to avoid confusion by payers, medical providers and injured workers.

Response: The Commission has adopted Work Loss Data Institute's *Official Disability Guidelines* (ODG) Treatment Guidelines which includes Appendix A, Workers' Compensation Drug Formulary for management of chronic pain and the use of opioids for all stages of pain management.

Additional Response: Appendix A, ODG Workers' Compensation Drug Formulary, has been adopted in whole by the Industrial Commission and will apply to all medications prescribed for the management of chronic pain and the use of opioids for all stages of pain management.

The following general comments, A through H, were received from CopperPoint Mutual Insurance Company on December 15, 2015 and were the same as the comments presented at the Oral Proceeding held on December 15, 2015:

Comment: A. National Council on Compensation Insurance (NCCI) report on Arizona medical cost. CopperPoint cites the following statistics from NCCI Medical Data Report for the state of Arizona September 2015: medical benefits represent 76% of total benefit cost which compares unfavorably to 64% for the Region (CO, NV, NM and UT) and 59% when looking at Countrywide. NCCI reports distribution of Arizona drug dollars at 13% while both the Region and Countrywide are reported to be 11%.

Comment: B. Adoption of Article 13. CopperPoint fully supports adoption of these rules.

Comment: C. Proposed Rule. CopperPoint comments that the proposed rule is a culmination of several years' work by highly respected individuals within the Arizona workers' compensation community. Hours of research were undertaken to investigate solutions to a real, shared problem – chronic pain and the use of opioid medications across all injuries. Litigation for these types of cases can be protracted and lengthy, resulting in treatment being delayed and debated for well over a year. The ultimate decision is not medically based but the course of care is determined by an administrative law judge.

Comment: D. Official Disability Guidelines (ODG). CopperPoint concurs that the ODG published by the Work Loss Data Institute are the most comprehensive, user

friendly and most appropriate for Arizona. They point out that nationally other workers' compensation jurisdictions have successfully been using evidence-based guidelines for years.

Comment: E. Preauthorization Request Form (MRO-1). CopperPoint suggests making the use of the MRO-1 Form mandatory to expedite recognition of a Provider Request for Preauthorization by a Payer, which would allow for appropriate processing for a timely response of the covered request by the payer. Experience from other jurisdictions indicates a vast majority of preauthorization requests are approved.

Comment: F. Administrative Review Process by Commission. Different opinions will be adequately resolved via the Administrative Review Process at the Commission through utilization of an independent peer review process. The requesting physician will have an opportunity to explain a requested deviation from the ODG to a similarly credentialed peer physician reviewer.

Comment: G. Fast Track Hearing Process. CopperPoint believes this process provides an opportunity to expedite a litigate dispute thereby eliminating the delay in treatment for the injured worker.

Comment: H. Expansion of the use of evidence-based medicine. CopperPoint urges the Commission to expand evidence-based medicine to all conditions 6 months after implementation of the Rule. Further delay in the expansion of evidence-based medicine will not adequately resolve the issues intended by implementation of this enhancement to our system.

Response: With respect to item E, neither the use of the preauthorization process or the "forms" within the electronic process are mandatory. With respect to item H, neither the Director's Advisory Committee's consensus recommendations nor the Commission's adoption of the consensus recommendations include any specific time period for the Commission to consider expanding the scope of the use of the treatment guidelines and the Commission is not able to predict when, or if, the scope will be expanded. The remaining comments seem to support the rulemaking and the Commission appreciates this support.

The following general comments, A through C, were received from ASIA 12/15/2015:

Comment: A. Strongly supports the Industrial Commission effort to implement evidence-based medicine treatment standards for Arizona's Workers' Compensation System.

Comment: B. Believes the original intent of A.R.S. § 23-1062.03 was to implement evidence-based guidelines for a broader range of workers' compensation injuries. By segregating the rules to apply to only one type of condition, the proposed rules create a disparity of treatment with injured workers who have sustained other conditions that may also benefit from the preauthorization and peer review processes.

Comment: C. Supports the remaining language outlining the process for evidence-based medicine

Response: A.R.S. § 23-1062.03 directs the Commission to develop and implement a process for the use of evidence-based medical treatment guidelines, where appropriate, to treat injured workers. In compliance with the statutory directive, the Commission has already adopted the ODG. Although the Commission has specified that the use of the ODG is limited to management of chronic pain and the use of opioids for all stages of pain management, the Commission recognizes that the application of the use of the ODG to treat injured workers may be expanded and Rule 1301(C) provides for this possibility.

The following general comments, A through D, were received from Coventry Health Care and CompPharma at the Oral Proceeding held 12/15/2015:

Comment: A. Supports across the board the adoption of treatment guidelines and recommendations by the Commission.

Comment: B. Requests clarification regarding preauthorization. There is no language that says preauthorization is required if treatment is not located within the treatment guidelines. They recommend a slight addendum to the language.

Comment: C. Asserts that the current definition of chronic pain leaves it open to interpretation regarding whose definition is accepted: Provider? Prescriber? Payer?

Injured Worker? Having a more concrete definition will ease everybody's burden as we put this into practice.

Comment: D. Suggests it is not clear what part of *Official Disability Guidelines* (ODG) will be adopted. Specifically, they would like to understand if Appendix A in the ODG, Drug Formulary, which includes multiple classes of medications, including narcotics and opioids, is adopted. They would like to ensure that for all of the Pharmacy Benefit Managers (PBMs) that covered lives continue to either get delivery of medications or people get into appropriate weaning practices. They would like to educate people in terms of how the process is going to work from all sides. As currently written guidelines versus practicality, they believe it is open-ended and would make it difficult to put things in a workflow process so that they (Coventry/CompPharma) know if they are adhering to guidelines. But generally speaking, they are very supportive of treatment guidelines.

Response: With respect to item B, the Arizona workers' compensation act does not require preauthorization and, assuming the Commission has the authority to impose mandatory preauthorization, the Commission has elected not to do so at this time. With respect to item C, the term "Chronic Pain" is defined by the ODG. With respect to item D, the Commission has adopted Work Loss Data Institute's *Official Disability Guidelines* (ODG) Treatment Guidelines which includes Appendix A, Workers' Compensation Drug Formulary for management of chronic pain and the use of opioids for all stages of pain management. The Commission appreciates the support for the rulemaking.

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

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.

b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the 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 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, 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 changed between the emergency and the final rulemaking packages:**

Not applicable

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

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 13. TREATMENT GUIDELINES

R20-5-1301. Adoption and Applicability of the Article

R20-5-1302. Definitions

R20-5-1303. Provider Request for Preauthorization

R20-5-1304. Payer Denial of Request for Preauthorization

R20-5-1305. Payer Denial of Payment for Provided Treatment or Services

R20-5-1306. Payer Reversal of Decision to Deny Treatment or Services

R20-5-1307. Payer Decision, In Whole or In Part

R20-5-1308. Failure to Comply with Required Time Limits

R20-5-1309. Payer Decision on Request for Preauthorization

R20-5-1310. Payer Reconsideration on Request for Preauthorization

R20-5-1311. Administrative Review by Commission

R20-5-1312. Hearing Process

ARTICLE 13. TREATMENT GUIDELINES

R20-5-1301. Adoption and Applicability of the Article

A. The Industrial Commission of Arizona (Commission) has adopted the Work Loss Data Institute's *Official Disability Guidelines – Treatment in Workers Compensation* (ODG) as the standard reference for evidence-based medicine used in treating injured workers within the context of Arizona's workers' compensation system. By adopting and referencing the most recent edition (at the time of treatment), and continuously updated *Official Disability Guidelines*, the Commission can ensure the latest available medical evidence is used in making medical treatment decisions for injured workers.

B. Until further action of the Commission, the guidelines shall apply to the management of chronic pain and the use of opioids for all stages of pain management. For purposes of this process, chronic pain shall be defined by the guidelines.

C. The Commission may modify or change the applicability of the guidelines as described in subsection (B) if the Commission determines that modification or changing the applicability of the guidelines will 1) improve medical treatment for injured workers, 2) make treatment and claims processing more efficient and cost effective, and 3) the guidelines adequately cover the body parts or conditions. Before taking action to modify

or change the applicability of the guidelines, the Commission shall provide an opportunity for public comment and hold a public hearing. A decision of the Commission under this subsection shall be made by a majority vote of a quorum of Commission members present at a public meeting.

D. Action taken by the Commission to modify or change the applicability of the guidelines under subsection (C) shall be published in the minutes of the Commission meeting when such action was taken. The minutes of this action shall be published on the Commission's website and shall be available from the Commission upon request.

E. The guidelines shall apply prospectively. Recommendations provided in the guidelines shall apply to medical treatment or services occurring on or after the effective date of this Article.

F. This Article applies to all claims filed with the Commission.

G. This Article only applies to medical treatment and services for body parts and conditions that have been accepted as compensable.

H. The guidelines are to be used as a tool to support clinical decision making and quality health care delivery to injured employees. The guidelines set forth care that is generally considered reasonable and are presumed correct if the guidelines provide recommendations related to the requested treatment or service. This is a rebuttable presumption and reasonable medical care may include deviations from the guidelines. To support a request to deviate from the guidelines, the provider must produce documentation and justification that demonstrates by a preponderance of credible medical evidence a medical basis for departing from the guidelines. Credible medical evidence may include clinical expertise and judgment.

I. The Commission shall provide administrative review and oversight of this Article.

R20-5-1302. Definitions

In this Article, unless the context otherwise requires:

"Act" means the Arizona Workers' Compensation Act, A.R.S. Title 23, Ch. 6, Articles 1 through 11.

"Active Practice" means performing patient care for a minimum of eight hours per week in one of the five preceding years.

"Administrative Law Judge" or "ALJ" means a hearing officer appointed under A.R.S. § 23-108.02.

“Administrative Review” means a process that includes a peer review for preauthorization of a request for medical treatment or services that has been denied or partially denied by a payer. The administrative review process will be managed by the Medical Resource Office (MRO) at the Industrial Commission of Arizona.

“American Board of Medical Specialties” means the organization that develops a uniform system for specialty boards to administer examinations for certification of physicians within specific medicine specialties.

“American Osteopathic Association” means the organization that develops a uniform system for specialty boards to administer examinations for certification of osteopathic physicians within specific osteopathic medicine specialties.

“Applicability” means the medical conditions that are covered under this Article and authorized by the Commission under R20-5-1301(B) and (C).

“Claim” means the workers’ compensation claim filed by the injured employee under the Act.

“Contractor” means an independent peer review organization accredited by URAC.

“Fast Track ALJ Dispute Resolution Program” or “fast track process” means the voluntary dispute resolution process set forth in R20-5-1312(B).

“International Classification of Diseases Code” or “ICD Code” means a set of medical diagnostic codes that creates a universal language for reporting diseases and injury.

“International Classification of Diseases” or “ICD” means an official list of categories of diseases, physical and mental, that is issued and maintained by the World Health Organization.

“IME” means an independent medical examination scheduled under R20-5-114.

“Injured Employee” means a person defined in A.R.S. § 23-901 whose claim has been accepted for workers’ compensation benefits.

“Medical File Review Opinions” means a formal examination of patient data and medical records for the purpose of determining the need for medical treatment, services or both.

“Payer” means an insurance carrier defined under A.R.S. § 23-901, a self-insured employer defined in R20-5-102, a third-party administrator, and the Special Fund of the Industrial Commission of Arizona.

“Peer Review” means an independent medical review conducted by an individual meeting the requirements of R20-5-1311(I).

"Preauthorization" means a request from a provider to a payer requesting approval to provide medical treatment or services to an injured employee.

"Provider" means a physician as defined in R20-5-102.

"Reconsideration" means a written request to the payer or identified review organization by an injured employee or medical provider to reconsider a previous payer decision to deny medical treatment or services and that identifies the specific justification to support the request.

"Third-Party Administrator" or "TPA" means an organization that processes insurance or employee benefit claims for a separate entity.

"Treatment Guidelines" or "guidelines" means medical treatment guidelines that are used as a tool to support clinical decision making and quality health care delivery to injured employees.

"URAC" refers to URAC, a non-profit organization formerly known as the Utilization Review Accreditation Commission.

R20-5-1303. Provider Request for Preauthorization

A. No preauthorization is required under the Act to ensure payment for reasonably required medical treatment or services. While preauthorization is not required under the Act, a provider may seek preauthorization as provided in this subsection.

B. A provider shall submit a request for preauthorization in writing, which shall include the following information:

1. Patient information (including date of injury, date of birth, and payer claim number);
2. Diagnosis and ICD code;
3. Date of request;
4. Type of request - Initial, Routine, Urgent, or Life Threatening;
5. A statement of the treatment or services requested. Where appropriate, information about quantity, strength, duration and frequency of the treatment or services should be included. Use of the applicable codes should also be included and will facilitate the process; and
6. Documentation, if not already provided, that supports the medical necessity and appropriateness of the treatment or services requested, such as office notes and diagnostic reports.

C. A provider may submit the request by mail, electronically or by fax.

R20-5-1304. Payer Denial of Request for Preauthorization

A. A payer shall not deny a request for preauthorization solely because the guidelines do not address the requested treatment or services.

B. A payer shall not deny a request for preauthorization that is supported by the guidelines, unless the payer can rebut the presumption of reasonableness and correctness with a medical or psychological opinion establishing by a preponderance of the evidence that there is a contraindication or significant medical or psychological reason not to authorize the requested treatment or services. Upon request by the provider or injured employee, a denial of preauthorization in this situation shall be processed as an immediate referral to the Commission for administrative review as provided in R20-5-1311 unless the payer obtains an IME in support of its denial. If the payer obtains an IME which serves as the basis for the denial, then review of the payer's decision shall be processed as a request for investigation under A.R.S. § 23-1061(J) if filed by the injured employee.

R20-5-1305. Payer Denial of Payment for Provided Treatment or Services

A. A payer shall not deny payment for provided treatment or services solely because the guidelines do not address the requested treatment or services.

B. A payer shall not deny payment for provided treatment or services supported by the guidelines, unless the payer can rebut the presumption of reasonableness and correctness with a medical or psychological opinion establishing by a preponderance of the evidence that there is a medical contraindication or significant medical or psychological reason not to pay for the treatment or services.

C. A dispute related to a payer's failure to pay for provided treatment or services may be processed as a request for investigation under A.R.S. § 23-1061(J) if filed by an injured employee.

R20-5-1306. Payer Reversal of Decision to Deny Treatment or Services

A payer may reverse its decision to deny treatment or services at any time throughout the process described in this Article. In this situation, the payer's subsequent authorization or agreement to pay for the treatment or services at issue shall end this process.

R20-5-1307. Payer Decision, In Whole or In Part

A payer may issue a decision approving or denying a request for preauthorization in whole, or in part.

R20-5-1308. Failure to Comply with Required Time Limits

A payer's failure to comply with the required time limits of this process may be considered unreasonable delay under R20-5-163.

R20-5-1309. Payer Decision on Request for Preauthorization

A. Except as provided in subsection (D), a payer shall communicate to the provider its decision on a request for preauthorization no later than 10 business days after the request is received. This decision shall comply with the requirements set forth in subsection (H). For purposes of this Section, the 10 business days begin to run the day after the payer receives the request.

B. If a payer fails to communicate to a provider its decision on request for preauthorization within 10 business days, then the payer's failure to take action is deemed a "no response" and the provider or injured employee may submit a request for administrative review directly to the Commission as provided in R20-5-1311.

C. If a payer receives a request for preauthorization that fails to meet the requirements of R20-5-1303, the payer may, in its discretion:

1. Act on the incomplete request for preauthorization; or
2. No later than 10 business days after the request is received, notify the provider that the request for preauthorization is incomplete.

D. If, no later than 10 business days after a request for preauthorization has been received, a payer provides notice to the provider that an IME has been requested under R20-5-114, then the payer's decision on a request for preauthorization shall be issued no later than 10 business days after the final IME report has been received by the payer. The payer shall provide a copy of the final IME report to the provider upon receipt of the IME report.

E. Unless the payer decision was supported by an IME or otherwise falls within subsection R20-5-1304(B), an injured employee or provider may seek reconsideration of a payer decision by submitting a written request to the payer (or review organization identified by the payer) that states the specific reasons and justifications to support the request. If not previously provided, the injured employee or provider shall include supporting medical documentation with their written request.

F. An injured employee may seek review of a payer decision that is supported by an IME by requesting an investigation under A.R.S. § 23-1061(J).

G. Unless the decision was supported by an IME, an injured employee or provider may seek review of a payer decision issued under R20-5-1304(B) by requesting administrative review by the Commission as provided in R20-5-1311.

H. A payer shall include the following information in its written decision to approve or deny, in whole or in part, the request for preauthorization to provide treatment or services:

1. The date on which the request for preauthorization was received;
2. Patient information, including date of injury, date of birth, payer claim number and Commission claim number;
3. The date on which an IME was completed, if applicable;
4. A statement of what has been authorized, including if applicable, a partial authorization;
5. A statement of explanation if the request for preauthorization is denied, in whole or in part, which should include the medical reason supporting the payer's decision;
6. A statement of the process under which a provider or injured employee may request reconsideration or review of the payer's denial, in whole or in part, of a request for preauthorization, which shall include the following information;
   a. For a decision that is issued without obtaining an IME that is not subject to R20-5-1304(B):

      "If you wish to request reconsideration of the decision regarding your request for preauthorization to provide treatment or services, you must send a written request for reconsideration to:

      Name of Payer or Review Organization Identified by Payer

      Commission Address

      Phone

      Fax

      E-mail

      You must include the specific reason and justification to support your request. Please include additional supporting medical documentation if not previously provided."
   b. For a decision that is supported by an IME:

"If you wish review of the decision regarding your request for preauthorization to provide treatment or services, then the injured employee is required to file a request for investigation under A.R.S. § 23-1061(J)."

c. For a decision that is issued without obtaining an IME that is subject to R20-5-1304(B):

"If you disagree with this decision and wish to request review by the Industrial Commission of Arizona, then you may submit a request for administrative review under R20-5-1311 to:

Industrial Commission of Arizona
Attn: Medical Resource Office
Commission Address
Commission Telephone Number

The provider shall file this request promptly and include the following information: patient information, including name, address, payer claim number, Commission claim number, and date of injury; diagnosis or ICD code; employer, insurance carrier or TPA information; provider information; information pertaining to request for treatment, including the justification for treatment; applicable treatment guideline or guidelines; denial of treatment by payer; copies of relevant medical information or records; and whether the request for medical treatment or services involves a request for urgent care or a life-threatening condition."

I. A payer shall provide a copy of its written decision to deny treatment or services to the injured employee.

R20-5-1310. Payer Reconsideration on Request for Preauthorization

A. Except as provided in subsection (C), a payer shall communicate to the provider its decision on a request for reconsideration no later than 10 business days after the request is received. This decision shall comply with the requirements set forth in subsection (E). For purposes of this subsection, the 10 business days begin to run the day after the payer receives the request for reconsideration.

B. If a payer fails to respond to a request for reconsideration within 10 business days, the provider or injured employee may submit a request for administrative review directly to the Commission as provided in R20-5-1311.

C. If, no later than 10 business days after a request for reconsideration has been received, a payer provides notice to the provider that an IME has been requested under R20-5-114, then the payer's decision on a request for reconsideration shall be issued no later than 10 business days after the final IME report has been received by the payer. The payer shall provide a copy of the final IME report to the provider upon receipt of the report.

D. Commission Review of Payer Reconsideration Decision

1. An injured employee or provider may seek review of a payer reconsideration decision by requesting an administrative review by the Commission as provided in R20-5-1311 unless the payer decision was supported by an IME.

2. An injured employee may seek review of a payer reconsideration decision that is supported by an IME by requesting an investigation under A.R.S. § 23-1061(J).

E. A payer shall include the following information in its written decision to approve or deny, in whole or in part, a request for reconsideration of a denial of preauthorization:

1. The date on which the request for reconsideration was received;

2. Patient information, including date of injury, date of birth, payer claim number and Commission claim number;

3. The date on which an IME was completed, if applicable;

4. A statement of what has been authorized including, if applicable, a partial authorization;

5. A statement of explanation if the request for treatment is denied, in whole or in part; and

6. A statement of the process under which a provider or injured employee may request Commission review of the payer's denial, in whole or in part, of a request for preauthorization, which shall include the following information:

a. For a reconsideration decision that is issued without obtaining an IME:

"If you disagree with this reconsideration decision and wish to request review by the Commission, then you may submit a request for administrative review under R20-5-1311 to:

Industrial Commission of Arizona
Attn: Medical Resource Office
Commission Address
Commission Telephone Number.

The provider shall file this request promptly and include the following information: patient information, including name, address, payer claim number, Commission claim number, and date of injury; diagnosis or ICD code; employer, insurance carrier or TPA information; provider information; information pertaining to request for treatment, including the justification for treatment; applicable treatment guideline and denial of treatment by payer; copies of relevant medical information or records; copies of relevant documentation related to the payer reconsideration decision; and whether the request for medical treatment or services involves a request for urgent care or a life-threatening condition."

b. For reconsideration of a decision that is supported by an IME:

"If you disagree with this reconsideration decision and wish review by the Commission, then the injured employee is required to file a request for investigation under A.R.S. § 23-1061(J)."

F. A payer shall provide a copy of its written reconsideration decision to deny treatment or services to the injured employee.

R20-5-1311. Administrative Review by Commission

A. Until further action of the Commission under R20-5-1301(C), administrative review under this Article is limited to requests for medical treatment or services related to the management of chronic pain and the use of opioids for all stages of pain management.

B. A request for administrative review shall be in writing and submitted by mail, electronically or by fax. The request shall include the following information:

1. Identifying information of the injured employee and claim, including the injured employee's name, address, commission claim number, and date of injury;
2. Diagnosis and ICD code;
3. Identifying information of the employer, insurance carrier or TPA;
4. Identifying information of the provider;
5. Information pertaining to request for treatment, such as the justification for treatment, applicable treatment guideline and, if applicable, the payer's denial of treatment;
6. Copies of relevant medical information or records;
7. Copies of documentation related to the payer's decision or non-response; and

8. Whether the request for medical treatment or services involves a request for urgent care or a life-threatening condition.

C. Upon receipt of a request for administrative review, the Commission shall determine whether the administrative review is available under this Article.

1. If administrative review is not available, then no later than three business days after receiving a request for administrative review, the Commission shall send notice to the injured employee and payer that administrative review is not available.

2. If administrative review is available, then no later than three business days after receiving the request, the Commission shall send notice to the payer that a request for administrative review has been received and provide information on how to participate in the process.

D. The administrative review conducted under this Section shall apply the guidelines as described in this Article and include a peer review performed by an individual meeting the requirements of subsection (I). The peer review shall consist of a records review and, when possible as described in subsection (I)(5), a conversation between the provider and individual conducting the peer review.

E. The Commission may enter into an agreement with one of more contractors, who shall be URAC accredited, to provide the review described in subsection (D).

F. The payer shall pay for the costs of the peer review conducted by the contractor.

G. To assist in its review, the Commission or its contractor may request or receive additional information and documentation from the provider, injured employee or payer, who shall cooperate and provide the Commission or its contractor with any necessary medical information, including information pertaining to the payer's decision.

H. Before the Commission or its contractor issues a determination denying the request for treatment or services, a good faith effort shall be made to conduct a peer review with the provider requesting authorization to perform the treatment or services.

I. The individual conducting the peer review shall:

1. Hold an active, unrestricted license or certification to practice medicine or a health profession and be involved in the active practice of medicine or a health profession during the five preceding years. For purposes of this subsection, "active practice" means performing patient care for a minimum of eight hours per week in one of the five preceding years;

2. Be licensed in Arizona, unless the Commission or its contractor is unable to find such an individual, in which case the peer review may be conducted by an individual who is licensed in another state of the United States and who meets the other requirements of this subsection;

3. For a review of a request from an allopathic or osteopathic physician, nurse practitioner, physician assistant, or other mid-level provider, hold a current certification from the American Board of Medical Specialties or the American Osteopathic Association in the area or areas appropriate to the condition, procedure or treatment under review;

4. Be in the same profession and the same specialty or subspecialty as typically performs or prescribes the medical procedure or treatment requested;

5. Make a good faith effort to contact the provider requesting the preauthorization. This good faith effort shall include making telephone contact during the provider's normal business hours and offering to schedule the peer review at a time convenient for the provider.

J. A provider may bill the payer for time spent participating in a peer review under this Section.

K. The Commission or its contractor shall issue a written determination of its administrative review that contains the name and title of the person that performed the administrative review, and includes the following information:

1. Whether the request for treatment or services is authorized or denied, in whole or in part;

2. The information reviewed;

3. The principle reason for the decision; and

4. The clinical basis and rationale for the decision.

L. An interested party dissatisfied with the administrative review determination may request that the dispute be referred to the Commission's Administrative Law Judge Division for hearing. This request for hearing shall:

1. Be in writing;

2. Filed no later than 10 business days after the administrative review determination is issued; and

3. State whether the party requests to participate in the Fast Track ALJ Dispute Resolution Program by stipulation, or declines to participate in the Fast Track ALJ Dispute Resolution Program.

M. If a timely request for hearing is filed, the administrative review determination is deemed null and void and shall serve no evidentiary purpose.

N. The information provided by the parties under this Section and the determination issued by the Commission shall become a part of the Commission claims file for the injured employee.

R20-5-1312. Hearing Process

A. A referral of a request for hearing under R20-5-1311(L) shall be processed as provided for in the Act unless all parties agree to participate in the fast track process.

B. The following applies only to the Fast Track ALJ Dispute Resolution Program:

1. Parties must agree to participate in the Fast Track ALJ Dispute Resolution Program with the understanding that a short form decision will be issued.
2. Review by the presiding ALJ shall be limited to the treatment or service dispute considered at the administrative review under R20-5-1311.
3. The presiding ALJ shall issue a notice of hearing within 10 business days of the receipt of the fully executed agreement to participate and certificate of readiness.
4. The hearing shall be held within 30 calendar days from the day that the notice of hearing is issued to the extent practicable.
5. Discovery is limited to five interrogatories and no depositions are permitted.
6. The presiding ALJ shall take all lay witness testimony at the time of the hearing and will not hold any further hearings.
7. The presiding ALJ shall consider documentary medical evidence only; no medical testimony shall be taken.
8. Medical file review opinions shall be deemed to constitute substantial evidence to support the requested treatment or service.
9. All documentary evidence shall be submitted no later than 10 business days before the scheduled hearing.
10. The hearing shall be recorded, but not transcribed, unless one or more of the parties files a request for review under A.R.S. § 23-942 and A.R.S. § 23-943.

11. The presiding ALJ shall issue a short form decision within five business days after the matter is deemed submitted.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

1. Identification of the rulemaking:

A.R.S. § 23-1062.03, requires the Industrial Commission of Arizona to develop and implement a process for the use of evidence-based treatment guidelines, where appropriate, to treat injured workers no later than December 31, 2014. The Industrial Commission is making these rules to comply with that legislative directive.

In 2012, a Director's Advisory Committee was created to provide recommendations to the Commission regarding the development and implementation of a process for the use of evidence based medical treatment guidelines, where appropriate, to treat injured workers. The Advisory Committee included physicians, attorneys, payer representatives from the stakeholder community and Industrial Commission staff.

On May 22, 2014 the Industrial Commission adopted the Advisory Committee's recommendation to adopt the Work Loss Data Institute's Official Disability Guidelines- Treatment in Workers Compensation (ODG) as the standard reference for evidence based medicine used in treating injured workers within the context of Arizona workers' compensation system. By adopting and referencing the most recent edition (at the time of treatment), and continuously updated Official Disability Guidelines, the Commission can ensure the latest available medical evidence is used in making medical treatment decisions for injured workers. The treatment guidelines are evidence-based, scientifically valid and outcome-focused, and are designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Evidence-based medicine means the use of current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, as well as treatment and practice guidelines to make decisions about the care of individual patients. Evidence-based medicine supports health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence-based medicine or if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.

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 the proposed rulemaking include injured employees who receive medical treatment and/or services related to their industrial injury, medical providers who treat injured workers, and payers who manage workers' compensation insurance claims such as self-insured employers, insurance carriers, third party administrators and the Industrial Commission Special Fund.

The injured employee and all other stakeholders should benefit from the adoption of rules for using evidence-based medical treatment guidelines. The use of evidence-based medical treatment guidelines should improve the quality and outcomes of medical care, and improve the efficiency and effectiveness of the process under which that medical care is provided to the injured employee. Use of the treatment guidelines should also reduce delays in providing employees with reasonably required medical treatment and improve the processing of their workers' compensation claims.

Through the Administrative Review Process (R20-5-1311), physicians will be making medical treatment decisions that should reduce timely and costly litigation regarding medical treatment decisions currently being decided by administrative law judges, which will benefit all of the stakeholders.

The proposed rules will result in no cost to injured employees. There will be an increase cost to medical providers, attorneys and payers due to the acquisition and maintenance of the adopted guidelines. While many stakeholders currently hold licenses to the adopted guidelines, other stakeholders will need to secure a license to use these products. Large payer groups may pay for bulk or enterprise licenses which reduces the per user cost. The 2016 single user cost ranges from $249 for Arizona medical providers and attorneys to $599 for payers. Payers may opt to purchase additional products from ODG which may increase the single user cost. The 2016 cost to the Commission for each workstation that is made available to the public will be $325. The Commission has not yet determined how many of these workstations will be made available to the public because the demand for such access cannot be accurately predicted, but will have one work station available for public use on October 1, 2016.

The administrative review process at the Commission will include the use of a URAC accredited peer review physician to decide if the requested medical treatment or service is approved, partially approved or denied. The cost for the peer review will vary depending on the complexity of the individual request. The anticipated peer review cost during 2016 will range from $250 to $550 and the cost for a peer review will be paid for by the Payer. The cost of a peer review is less than half of a typical independent medical evaluation that is currently used to resolve many of the medical issues that may be resolved by a peer review.

3. <u>A cost benefit analysis of the following:</u>

(a) <u>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:</u>

In 2012, the Arizona Legislature passed HB 2368 that required the Commission to develop and implement a process for the use of treatment guidelines. In 2014, the Commission created the Medical Resource Office (MRO) to provide administrative review and oversight of the implementation of a process for the use of medical treatment guidelines, A. R. S. § 23-1062.03.

The MRO office has a full-time Program Manager who was promoted to this role from within the Agency. Two full-time employees (FTE's) to implement and enforce the rules will be hired. The two FTE positions are positions that existed in the Agency and became vacant and available for use by the MRO office. These two FTE positions are accounted for in the current 2016 Industrial Commission budget. The annual cost for three full-time employees is approximately $217,000 in 2016 dollars.

An automated electronic system has been developed by an outside vendor for the Industrial Commission costing $190,300. The estimated annual maintenance and support cost for the automated electronic portal is $38,000. As of March 2016, the cost for annual updates of the ICD-10 and CPT digital Codes and books used to support the electronic process is $1,300.

The Industrial Commission currently has eleven licensed ODG users, one licensed user in the MRO office, and 10 users in the Special Fund Division and Director's Office costing $249 per license in 2016. The Industrial Commission expects to add two ODG licenses for MRO staff in 2017 at $249 per license for 2017 annual total cost of approximately $3250.00.

(b) Costs and benefits to political subdivisions directly affected by the rulemaking:

The costs for political subdivisions may include the purchase of ODG evidence-based medical treatment guidelines for those cities, towns and municipalities that are self-insured employers and administer claims for their injured employees. The treatment guidelines are evidence-based, scientifically valid and outcome focused, and are designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Avoiding excessive or inappropriate medical care will reduce medical cost and improve return to work outcomes which is financially beneficial to the employee and employer. The proposed rules will apply to the treatment of chronic pain and the use of opioids for all stages of pain management. Using treatment guidelines and a closed drug formulary should reduce misuse, abuse, addiction and potentially fatal consequences associated with the use of opioid medication.

(c) Costs and benefits to businesses directly affected by the rulemaking:

No businesses are directly affected by rulemaking; however, costs related to workers' compensation insurance may be affected. Limiting overutilization of medical treatment and inappropriate care will lead to a reduction in system cost and an improvement in injured worker outcomes.

Drug costs have become a significant portion of total workers' compensation medical costs. The ODG treatment guidelines include Appendix A, ODG Workers' Compensation Drug Formulary. According to an Analysis of Proposed Arizona Rules R20-5-1301 – R20-5-1312 (Medical Treatment Guidelines) dated January 29, 2016 from the National Council on Compensation Insurance, Inc. (NCCI), it is estimated the rules, if adopted, would reduce overall workers compensation costs in Arizona by $23 million just

by adopting the closed Drug Formulary. This conclusion was based on an effective date of July 1, 2016 and the estimated cost savings is for the six month period from July 1 to December 31, 2016.

For the state of Arizona, in the service year 2014 (medical services delivered from January 1, 2014, to December 31, 2014) NCCI reported the number of transactions was over 1,819,800, with more than $323,000,000 medical benefits paid for over 72,100 claims, representing data from 95% of the workers' compensation premium written. According to the Industrial Commission Annual Self-Insured reports, during service year 2014, self-insured employers reported $107,598,346 in medical benefits paid. A very conservative reduction in medical payments by 5%, through efficient identification of necessary medical treatments and services, would have a significant impact on the reported $430,598,346 medical costs in the Arizona workers' compensation system.

4. Impact on private and public employment in businesses, agencies and political subdivisions:

The treatment guidelines will apply to treatment and services for the management of chronic pain and the use of opioids for all stages of pain management. According to data from Arizona's Controlled Substances Prescription Monitoring Program, there are approximately 10 million Class II-IV prescriptions written and 524 million pills dispensed each year. Prescription pain relievers account for more than half of the drugs dispensed in the state. Overdose deaths from prescription analgesics increased more than four-fold from 1999-2010 in the United States. The Centers for Disease Control and Prevention (CDC) declared it an epidemic. Arizona ranked 6th highest in the nation in 2010 for drug overdose deaths and had the 5th highest opioid prescribing rate in the United States in 2011 (Paulozzi, Len. Prescription Drug Overdose National Perspective, presented at the Arizona Opioid Prescribing Summit, March 15, 2014. Accessed at www.azdhs.gov/clinicians/clinical-guidelines-recommendations/index.htm)) These treatment guidelines are intended to help medical providers and injured employees by reducing inappropriate use of opioids, improving safety, and reducing harm while preserving the roles of providers and injured employees in the management of chronic pain. Addiction to opioid painkillers presents socioeconomic problems for the addicted employee, family members, employers and the Arizona. Treatment guidelines for the use of opioids for all stages of pain management will help Arizona maintain a healthy workforce.

5. Impact on small businesses:

(a) Identification of the small business subject to the rulemaking:

No small businesses are subject to the rulemaking.

(b) Administrative and other costs required for compliance with the rulemaking:

Not applicable.

(c) Description of the methods that may be used to reduce the impact on small businesses:

Not applicable.

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

There will be no effect on state revenues.

6. Probable effect on state revenues:

There will be no effect on state revenues.

7. Less intrusive or less costly alternative methods considered:

The Director's Advisory Committee for Evidence-Based Medicine Treatment Guidelines that included physicians, attorneys and payer stakeholders considered a number of evidence-based medicine treatment guidelines. The Advisory Committee carefully considered the costs and benefits associated with each treatment guideline studied and recommended the Industrial Commission adopt ODG as the least intrusive, most flexible and most cost effective application.

8. Data on which the rule is based:

No studies were performed as a basis for these rules and, therefore, no original empirical data exists.

23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.

2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.

3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.

4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.

5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.

6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.

7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.

8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to section 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

23-1062.03. Evidence based medical treatment guidelines

The commission shall develop and implement a process for the use of evidence-based medical treatment guidelines, where appropriate, to treat injured workers no later than December 31, 2014. The commission shall provide a progress report to the governor, the president of the senate and the speaker of the house of representatives describing the status of the development and implementation of this process no later than the end of each calendar year beginning on December 31, 2012, and ending on December 31, 2014. If the commission requires additional time beyond December 31, 2014, to develop and implement this process, then the commission shall include in its 2014 report a projected timetable to complete the process.

E-2

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (R-16-0602)
Title 18, Chapter 9, Department of Environmental Quality Water Pollution Control

Amend: R18-9-704

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: E-2**

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

FROM: Shama Thathi, Staff Attorney

DATE: May 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (R-16-0602)**
Title 18, Chapter 9, Article 7, Water Pollution Control

Amend: R18-9-704

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

The purpose of the Arizona Department of Environmental Quality (Department) is to "consolidate and focus responsibility for environmental management and administration of water quality, air quality, solid waste and hazardous waste regulation with the goal of increasing effectiveness, efficiency and public acceptance of environmental regulation." Laws 2014, Ch. 247, § 7.

This rulemaking amends one rule in A.A.C. Title 18, Chapter 9, Article 7. The proposed rulemaking will modify the regulation regarding the permitted uses of reclaimed water. The amendment will remove the prohibition against any form of reclaimed water runoff.

Article Contents, Including the Subject Matter of Each Rule Affected

Article 7 contains twenty rules, one of which is affected by this rulemaking, that relate to direct reuse of reclaimed water. Specifically, R18-9-704 relates to general requirements.

Year that Each Rule was Last Amended or Newly Made

R18-9-704 was adopted by final rulemaking on January 16, 2001.

Proposed Action

The Department proposes to only amend R18-9-704(G).

Summary of Reasons for the Proposed Action

As stated above, the proposed action will remove the prohibition against any form of reclaimed water runoff. The current prohibition requires reclaimed water permittees to install control measures to prevent any reclaimed water runoff.

Exemption or Request and Approval for Exception from the Moratorium

On November 3, 2015, the Department received an exception from the Moratorium for this rulemaking.

Substantive or Procedural Concerns

None**.**

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

Yes. The Department cites statutory authority for the rule. Under A.R.S. § 49-203(A)(6), the director shall "adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water."

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rule is written in a clear, concise, and understandable manner.

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

Yes. The Department indicates that it received two written comments from a representative of City of Flagstaff, asking for clarification as to whether general or individual Arizona Pollutant Discharge Elimination System (AZPDES) permit is required and which specific general AZPDES permit is required under the new rule. In response, the Department amended the rule to include "an individual or general" permit.

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

No. As mentioned above, the Department changed the rule language from "a separate" to "an individual or general" National Pollutant Discharge Elimination System (NPDES) or AZPDES permit. Council staff does not consider this a substantial substantive change.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

Yes. The Department indicates that no study was reviewed for this rule.

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

No. The Department indicates that no federal laws directly correspond to the rule.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

Yes. The Department indicates that a permit is required. However, the rule does not specify whether a permittee must apply for a general or individual AZPDES permit. The Department indicates that an AZPDES general permit is readily available for various types of reclaimed water discharges.

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

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

9. Conclusion

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

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: E-2**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : May 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (R-16-0602)**
Title 18, Chapter 9, Article 7, Water Pollution Control

Amend: R18-9-704

I have reviewed the economic, small business, and consumer impact statement (EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

In this rulemaking, the Arizona Department of Environmental Quality (Department) is proposing an amendment to one rule. This amendment will remove the prohibition against any form of reclaimed water runoff. While this prohibition remains in effect, reclaimed water permittees must install control measures to prevent any reclaimed water runoff.

There are currently 465 reclaimed water permit holders in Arizona. Roughly 22 percent are public entities, 39 percent are small businesses, and the remaining 39 percent are large businesses. The proposed rule will provide greater flexibility for these permittees by expanding the locations where reclaimed water can be used feasibly.

1. **Costs and Benefits for:**

a. The implementing agency:

The Department is the main agency that will be impacted by this rulemaking. The Department expects only minimal impact since it already issues permits for using reclaimed water.

b. Political subdivisions:

The proposed amendment will affect political subdivisions in the same manner that it affects businesses as discussed below.

c. Businesses:

The Department states that any reclaimed water permittees could be impacted by having reduced regulations. By permitting some reclaimed water runoff, businesses can use reclaimed water in areas without substantial control measures.

d. Small businesses:

The Department estimates that roughly half of the 364 private reclaimed water permittees are small businesses. This change would remove reclaimed water runoff prohibitions. The Department notes that reclaimed water permits incur a fee, and small businesses can make the determination if the benefits of additional reclaimed water use outweigh the cost of the permit.

e. Consumers directly affected by the rulemaking:

The Department estimates that the amended rule will have no direct economic impact on private persons or consumers.

2. <u>Do the probable benefits outweigh the probable costs?</u>

The Department indicates that the rule does not directly impose additional costs on reclaimed water permittees because they are not obligated to expand use after the amendment. It benefits reclaimed water permittees by providing additional flexibility in where reclaimed water can be used. The rule will increase reclaimed water availability for areas where total runoff control is not feasible.

3. <u>Analysis of methods to reduce the small business impact:</u>

The Department indicates that the rule will remove a prohibition on reclaimed water runoff, which reduces regulation on small businesses, large businesses, and public entities. The Department states that any permit exemptions are not possible due to the requirements in A.R.S. § 49-255.01 and the federal Clean Water Act.

4. <u>The probable effect on state revenues:</u>

The Department concludes that the rule may have a slight positive impact on state revenues due to potentially increased permit fees.

5. <u>Analysis of any less intrusive or less costly alternative methods:</u>

The Department determines that the rule removes a current prohibition on reclaimed water users. The current rule is more intrusive than the proposed amendment.

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No analysis was submitted that compares the rule's impact of the competiveness of businesses in this state to the impact on businesses in other states.

7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.

No outside data or studies were submitted for use in the EIS.

8. Conclusion:

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the rule be approved.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

April 7, 2016

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

Re: 18 A.A.C. 9, Department of Environmental Quality – Water Pollution Control

Dear Ms. Ong:

Enclosed please find a final rule package from the Arizona Department of Environmental Quality (ADEQ) for placement on the Council agenda. Pursuant to A.A.C. R1-6-104, I provide the following information:

- The close of record date was January 5, 2016.
- The rulemaking does not relate to a five-year-review report.
- The rule does not include new or increased fees.
- ADEQ is requesting an effective date sixty days after filing with the Office of the Secretary of State.
- The Governor's office approved an exception from E.O. 2015-01 on November 3, 2015.

I certify that the preamble contains a reference to any study relevant to the rules that ADEQ reviewed and either did or did not rely on in our evaluation and justification for the rule. No new full-time employees are necessary to implement and enforce the rule. No competitive analysis was submitted.

Please do not hesitate to contact me, or Wendy LeStarge, at 602-771-4836 (also wl1@azdeq.gov) if there are any questions we can answer for you.

Sincerely,

Misael Cabrera
Director

Enclosures:

1. Notice of Final Rulemaking
2. Economic, small business and consumer impact statement
3. Copies of written and oral comments received
4. Copy of e-mail approval for exception from E.O. 2015-01

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

PREAMBLE

1. Article, Part of Sections Affected (as applicable) Rulemaking Action

Section	
R18-9-704	Amend

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. § 49-203.

Implementing statute: A.R.S. § 49-203(A)(6).

3. The effective date of the rule:

60 days from filing with the Secretary of State

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

Notice of Rulemaking Docket Opening: 21 A.A.R. 3086 (December 4, 2015)

Notice of Proposed Rulemaking: 21 A.A.R. 3017 (December 4, 2015)

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

Name: Wendy LeStarge

Address: Arizona Department of Environmental Quality
Water Quality Division
1110 W. Washington Street
Phoenix, Arizona 85007

Telephone: (602) 771-4836 (Toll-free number in Arizona: (800) 234-5677)

Fax: (602) 771-4834

E-mail: lestarge.wendy@azdeq.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 Arizona Department of Environmental Quality (ADEQ) proposes to amend R18-9-704 in order to allow incidental runoff of reclaimed water to waters of the U.S. under certain conditions. The Governor's office approved an exception from E.O. 2015-01 on November 3, 2015.

Reclaimed water is highly treated wastewater from a wastewater treatment plant. A.R.S. § 49-201(32). Reclaimed water has uses for various beneficial purposes as allowed in the rule, such as for irrigation. Using reclaimed water offsets and conserves potable water for human consumption and domestic purposes. The proposed rule amendment would:

- Allow some runoff of reclaimed water from a site where it is being applied.
- Require that the runoff be authorized under a separate Arizona Pollutant Discharge Elimination System (AZPDES) permit or National Pollutant Discharge Elimination System (NPDES) permit. An AZPDES general permit is readily available for many types of reclaimed water discharges and ensures that there is no violation of the Clean Water Act.
- Continue restrictions in the existing reclaimed water rules to ensure that only Class A reclaimed water would be used when there is a relatively high possibility of human exposure to reclaimed water.

ADEQ proposes to limit the scope of this rulemaking to amending only R18-9-704(G). ADEQ is aware of at least one municipality that must use more expensive potable water for snowmaking for an event because it is not able to control all the runoff if available reclaimed water were used. Making this minor improvement as soon as possible will allow the permitted use of reclaimed water for snowmaking the next winter season by this municipality and by any other parties planning similar events.

ADEQ is aware that the reclaimed water rules are in need of improvement and is beginning to work with stakeholders to consider other changes to the reclaimed water rules. ADEQ published two Notices of Docket Openings for Reclaimed Water Quality Standards (18 A.A.C. 11, Article 3) and Reclaimed Water Conveyances and Direct Reuse of Reclaimed Water (18 A.A.C. 9, Articles 6 and 7) on January 1, 2016. Other rule changes could include:

- Updating the list of allowable direct reuse activities, such as for emergency fire fighting.
- Developing additional general permits and streamlining the individual permit process.
- Allowing for amending a general permit without obtaining a new general permit.

- Making monitoring requirements consistent for wastewater and reclaimed water so that both are protective of human health and neither is unduly burdensome or duplicative.

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:

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

The proposed changes should benefit reclaimed water permittees. Reclaimed water permittees will have the choice to use reclaimed water under certain conditions, without the need for control measures to prevent runoff. Using reclaimed water allows a permittee to offset demands on the potable water supply. Reclaimed water permittees will have some additional costs of an AZPDES permit fee and complying with any control measures or treatment required in the AZPDES permit. The reclaimed water permittee will be able to consider whether additional reclaimed water usage outweighs the AZPDES permitting costs.

B. 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: Wendy LeStarge

Address: Arizona Department of Environmental Quality
Water Quality Division
1110 W. Washington Street
Phoenix, Arizona 85007

Telephone: (602) 771-4836 (Toll-free number in Arizona: (800) 234-5677)

Fax: (602) 771-4834

E-mail: lestarge.wendy@azdeq.gov

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

Reclaimed water permittees will be directly affected by the rulemaking. Reclaimed water quality standards and allowable uses are established in 18 A.A.C. 11, Article 3. Article 3 establishes five classes of reclaimed water based on protection of public health and groundwater quality (A+, A, B+, B, and C). Class A+ reclaimed water has undergone the most treatment of a minimum of secondary treatment, nitrogen removal treatment, and high level disinfection. Class B reclaimed water has undergone the minimum treatment of secondary treatment, and some disinfection. Allowable end uses correspond with the water quality class designations. End uses include crop irrigation, residential and school ground landscape irrigation, toilet and urinal flushing, and recreational impoundments. Using reclaimed water allows a permittee to offset demands on the potable water supply. Class C reclaimed water has undergone secondary treatment in a series of wastewater stabilization ponds, with or without disinfection. The types of direct reuse allowed for Class C reclaimed water are limited, such as for sod irrigation and silviculture.

Currently there are eleven reclaimed water individual permits, 396 Type 2 reclaimed water general permits, and 58 Type 3 reclaimed water general permits. Reclaimed water permittees will have the choice to use reclaimed water under certain conditions of runoff, if the runoff can be permitted under an AZPDES permit. Reclaimed water permittees will have some additional costs of an AZPDES permit fee and complying with any control measures or treatment required in the AZPDES permit. The reclaimed water permittee will be able to consider whether additional reclaimed water usage outweighs the AZPDES permitting costs.

D. Cost-benefit analysis of probable costs and benefits to ADEQ and other agencies:

ADEQ is the main agency impacted by the proposed changes. ADEQ already issues reclaimed water permits and AZPDES permits so it anticipates that the rulemaking will have only a minor impact.

E. Cost-benefit analysis of probable costs and benefits to political subdivisions:

Political subdivisions and government entities that are reclaimed water permittees could be impacted. There are approximately 101 reclaimed water permittees that are public entities, such as cities and

towns, counties, improvement districts, and schools. Costs and benefits should be similar as to businesses, and are discussed below.

F. Cost-benefit analysis of probable costs and benefits to businesses:

Businesses that are reclaimed water permittees could be impacted. There are about 364 privately owned reclaimed water permittees, including homeowner associations, golf courses, and home developers.

Reclaimed water permittees will have the choice to use reclaimed water under certain conditions of runoff, if the runoff can be permitted under an AZPDES permit. Permittees will no longer have to set up unnecessary controls to prevent all runoff. Using reclaimed water allows a permittee to offset demands on the potable water supply. This proposed rule gives reclaimed water permittees additional options for applying reclaimed water to sites where it could not apply before because there would be some runoff.

Permittees that choose to apply reclaimed water and have runoff will have to obtain an AZPDES permit and will incur some additional costs of an AZPDES permit fee and complying with any control measures or treatment required in the AZPDES permit. Under A.R.S. § 49-255.01, any discharge to waters of the U.S. requires coverage under an AZPDES permit, unless excluded from permit requirements under statute or rule. Discharges made to waters of the U.S. via Municipal Separate Stormwater Sewer Systems (MS4s) or other conveyances also require coverage. AZPDES permits impose some limitations on pollutants that are discharged and are issued for no more than five years.

ADEQ is not requiring a specific AZPDES permit (or NPDES permit if issued by EPA), in order to allow the circumstances of the discharge to determine the appropriate permit (such as volume of discharge, location of discharge, or class of the reclaimed water). ADEQ believes the most likely permit to be used is the De Minimis General Permit (DMGP). The DMGP allows certain short-term and/or low volume discharges that meet the applicable surface water quality standards, are generally of limited flow and/or frequency, and do not last continuously for longer than 30 days unless approved in advance by ADEQ. Initial fees range from $250 for a one-time single source discharge to $500 for a new areawide, projectwide, or facilitywide discharge. There is an additional fee of $1,000 if a Best Management Practices Plan review is required. An annual fee of the same amount as the

initial fee is assessed for discharge authorizations that remain active longer than one year. For established areawide, projectwide, or facilitywide permittees, there is no fee for adding eligible discharges to the authorization.

The DMGP sets some limitations such as for the amount of chlorine and E. coli that can be in the discharge water. Some classes of reclaimed water could potentially exceed the limits, so sampling may be required. A reclaimed water permittee will be able to consider if the potential costs of permit fees, additional treatment, or sampling outweigh the benefit of additional usage. For permittees that chose not to exercise the option, the rulemaking will not impose any additional cost.

G. Probable impact on public and private employment:

ADEQ does not anticipate that private or public employment will be directly affected by these rules.

H. Probable impact on small businesses:

ADEQ would use the small business definition in A.R.S. § 41-1001(21) of "a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." Based on this definition, ADEQ estimates that more than half of the 364 privately-owned reclaimed water permittees are a small business.

1) The administrative and other costs required for compliance with the proposed rule making.

This rulemaking removes a prohibition and allows some additional uses for a reclaimed water permittee. For permittees that choose to exercise the option and have some runoff of reclaimed water, they are required under A.R.S. § 49-255.01 to have permit coverage. AZPDES permit coverage imposes some costs, for which a reclaimed water permittee can decide if the benefits outweigh the costs.

2) A 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.

(i) Establish less costly schedules or less stringent deadlines for compliance, or consolidate or simplify the rule's compliance or reporting requirements in the proposed rule making.

ADEQ is removing an outright prohibition and allowing discharge from runoff of reclaimed water if it is authorized by an AZPDES permit. Coverage under a NPDES or AZPDES permit is required under A.R.S. § 49-255.01 and the federal Clean Water Act for any discharge to

waters of the U.S.

(ii) *Establish less costly compliance requirements, including establishing performance standards to replace design or operational standards in the proposed rule making.*

ADEQ's laws, rules, and permits must comply with federal Clean Water Act requirements.

(iii) *Exempt small businesses from any or all requirements of the proposed rule making.*

Coverage under a NPDES or AZPDES permit is required under A.R.S. § 49-255.01 and the federal Clean Water Act for any discharge to waters of the U.S.

3) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

ADEQ does not anticipate that the rulemaking will directly impact private persons or consumers.

I. Probable effect on state revenues:

There could be a slight increase on state revenues due to increased AZPDES permit fees.

J. Description of less intrusive or less costly alternative methods of achieving the proposed rulemaking:

ADEQ is implementing a less intrusive method by removing an existing prohibition and allowing permittees the option to have runoff of reclaimed water that is permitted under an AZPDES permit.

K. Explanation of the limitations of the data available for this economic small business and consumer impact statement.

ADEQ generally does not track in a database certain information on permittees, such as whether publicly or privately owned and the type of reuse activity. Some of the information came from an informal review of past applications and permits.

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

In response to comments, ADEQ changed the language “a separate” to “an individual or general” NPDES or AZPDES permit.

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

ADEQ received two related comments from Steve Camp, representing the City of Flagstaff:

COMMENT: The language in the rule does not specify if a general or individual AZPDES permit is required.

RESPONSE**:** ADEQ meant that the discharge could be authorized by either an individual or general NPDES or AZPDES. ADEQ agrees with the commentor and changed the language proposed.

COMMENT: This is not specific as to which AZPDES general permit is required. ADEQ has several different general AZPDES permits available. The City of Flagstaff currently has coverage under the AZPDES De Minimis general permit (AZG2010-001) and the AZPDES MS4 stormwater general permit (AZG2002-002). Does ADEQ intend for the general AZPDES De Mimimis permit to meet the APDES permitting requirements or will the City of Flagstaff require a separate AZPDES permit? If the De Minimis permit will meet the permitting requirements, will the City of Flagstaff be required to apply for the Specific Approval, specific to the Dew Downtown event, as specified in Part I.B.7?

RESPONSE: ADEQ intends that the rule language apply broadly to various situations. Some of those may be appropriate for coverage under the De Minimis General Permit (DMGP) or another AZPDES general permit, and some may require individual AZPDES permits. As now drafted, the 2016 DMGP would allow coverage of reclaimed water discharges such as runoff of Class A reclaimed water from the Dew Downtown event, subject to Specific Approval from ADEQ (DMGP Part I.B.7.). Once the 2016 DMGP is issued, the City of Flagstaff could apply for this coverage as an addition to its existing Areawide DMGP authorization. The MS4 stormwater general permit would not be applicable to discharges of reclaimed water.

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:

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:

For a reclaimed water permittee that chooses to exercise the option, the reclaimed water runoff must be permitted. The rule does not specify whether a permittee must apply for an individual or general AZPDES permit, in order to allow the circumstances of the discharge to determine the appropriate permit (such as volume of discharge, location of discharge, or class of the reclaimed water). An AZPDES general permit is readily available for many types of reclaimed water discharges and ensures that there is no violation of the Clean Water Act.

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

requirements of federal law:

There is no federal law applicable to direct reuse of reclaimed water. Coverage under a NPDES or AZPDES permit is required under A.R.S. § 49-255.01 and the federal Clean Water Act for any discharge to waters of the U.S. This rule and A.R.S. § 49-255.01 are not more stringent than the federal Clean Water Act.

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

No person has submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in other states.

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

None

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

Not applicable

15. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

ARTICLE 7. DIRECT REUSE OF RECLAIMED WATER

Section

R18-9-704. General Requirements

ARTICLE 7. DIRECT REUSE OF RECLAIMED WATER

R18-9-704. General Requirements

A. Sewage treatment facility. Except for permits continued under R18-9-703(A), a sewage treatment facility owner or operator shall provide reclaimed water for direct reuse only under an individual Aquifer Protection Permit amended under R18-9-703(C)(2).

B. Additional treatment. If an owner or operator of a facility accepts reclaimed water and provides additional treatment for a higher quality direct reuse, the facility is considered a sewage treatment facility and shall operate under the requirements of an individual Aquifer Protection Permit amended under R18-9-703(C)(2).

C. Reclaimed water blending facility. An owner or operator of a reclaimed water blending facility shall not conduct blending operations without obtaining a Reclaimed Water Individual Permit or Reclaimed Water General Permit.

D. Reclaimed water agent. A person shall not operate as a reclaimed water agent without obtaining a Reclaimed Water Individual Permit or a Reclaimed Water General Permit.

E. End user. A person shall not directly reuse reclaimed water unless permitted under this Article.

F. Irrigating with reclaimed water. A permittee irrigating with reclaimed water shall:

1. Use application methods that reasonably preclude human contact with reclaimed water;
2. Prevent reclaimed water from standing on open access areas during normal periods of use;
3. Prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas; and
4. Secure hose bibbs discharging reclaimed water to prevent use by the public.

G. Prohibited activities.

1. Irrigating with untreated sewage;
2. Providing or using reclaimed water for any of the following activities:
   a. Direct reuse for human consumption;
   b. Direct reuse for swimming, wind surfing, water skiing, or other full-immersion water activity with a potential of ingestion; or
   c. Direct reuse for evaporative cooling or misting.
3. Misapplying reclaimed water for any of the following reasons:
   a. Application of a stated class of reclaimed water that is of lesser quality than allowed by this Article for the type of direct reuse application;
   b. Application of reclaimed water to any area other than a direct reuse site; or

c. Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, except for:

i. agricultural return flow that is directed onto an adjacent field or returned to an open water conveyance. ;or

ii. a discharge authorized by an individual or general NPDES or AZPDES permit.

H. A permittee shall place and maintain signage at locations specified in Table 1 so the public is informed that reclaimed water is in use and that no one should drink from the system.

Table 1. Signage Requirements for Direct Reuse Sites

Reclaimed Water Class	Hose Bibbs	Residential Irrigation	Schoolground Irrigation	Other Open Access Irrigation	Restricted Access Irrigation	Mobile Reclaimed Water Dispersal
A+	Each bibb	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	Back of truck or on tank
A	Each bibb	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual	On premises visible to staff and students	None	None	Back of truck or on tank

		homeowners by the homeowner's association.				
B+	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use 3. Notice on golf score cards, if applicable	Back of truck or on tank
B	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use 3. Notice on golf score cards, if applicable	Back of truck or on tank
C	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use	Back of truck or on tank

Note: All impoundments with open access including lakes, ponds, ornamental fountains, waterfalls, and other water features shall be posted with signs regardless of the class of reclaimed water.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

Economic, Small Business and Consumer Impact Statement

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

The proposed changes should benefit reclaimed water permittees. Reclaimed water permittees will have the choice to use reclaimed water under certain conditions, without the need for control measures to prevent runoff. Using reclaimed water allows a permittee to offset demands on the potable water supply. Reclaimed water permittees will have some additional costs of an AZPDES permit fee and complying with any control measures or treatment required in the AZPDES permit. The reclaimed water permittee will be able to consider whether additional reclaimed water usage outweighs the AZPDES permitting costs.

B. 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:	Wendy LeStarge
Address:	Arizona Department of Environmental Quality
	Water Quality Division
	1110 W. Washington Street
	Phoenix, Arizona 85007
Telephone:	(602) 771-4836 (Toll-free number in Arizona: (800) 234-5677)
Fax:	(602) 771-4834
E-mail:	lestarge.wendy@azdeq.gov

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

Reclaimed water permittees will be directly affected by the rulemaking. Reclaimed water quality standards and allowable uses are established in 18 A.A.C. 11, Article 3. Article 3 establishes five classes of reclaimed water based on protection of public health and groundwater quality (A+, A, B+, B, and C). Class A+ reclaimed water has undergone the most treatment of a minimum of secondary treatment, nitrogen removal treatment, and high level disinfection. Class C reclaimed

water has undergone the minimum treatment of secondary treatment, and some disinfection. Allowable end uses correspond with the water quality class designations. End uses include crop irrigation, residential and school ground landscape irrigation, toilet and urinal flushing, and recreational impoundments. Using reclaimed water allows a permittee to offset demands on the potable water supply.

Currently there are eleven reclaimed water individual permits, 396 Type 2 reclaimed water general permits, and 58 Type 3 reclaimed water general permits. Reclaimed water permittees will have the choice to use reclaimed water under certain conditions of runoff, if the runoff can be permitted under an AZPDES permit. Reclaimed water permittees will have some additional costs of an AZPDES permit fee and complying with any control measures or treatment required in the AZPDES permit. The reclaimed water permittee will be able to consider whether additional reclaimed water usage outweighs the AZPDES permitting costs.

D. Cost-benefit analysis of probable costs and benefits to ADEQ and other agencies:

ADEQ is the main agency impacted by the proposed changes. ADEQ already issues reclaimed water permits and AZPDES permits so it anticipates that the rulemaking will have only a minor impact.

E. Cost-benefit analysis of probable costs and benefits to political subdivisions:

Political subdivisions and government entities that are reclaimed water permittees could be impacted. There are approximately 101 reclaimed water permittees that are public entities, such as cities and towns, counties, improvement districts, and schools. Costs and benefits should be similar as to businesses, and are discussed below.

F. Cost-benefit analysis of probable costs and benefits to businesses:

Businesses that are reclaimed water permittees could be impacted. There are about 364 privately owned reclaimed water permittees, including homeowner associations, golf course, and home developers.

Reclaimed water permittees will have the choice to use reclaimed water under certain conditions of runoff, if the runoff can be permitted under an AZPDES permit. Permittees will no longer have to set up unnecessary controls to prevent all runoff. Using reclaimed water allows a permittee to

offset demands on the potable water supply. This proposed rule gives reclaimed water permittees additional options for applying reclaimed water to sites where it could not apply before because there would be some runoff.

Permittees that choose to apply reclaimed water and have runoff will have to obtain an AZPDES permit and will incur some additional costs of an AZPDES permit fee and complying with any control measures or treatment required in the AZPDES permit. Under A.R.S. § 49-255.01, any discharge to waters of the U.S. requires coverage under an AZPDES permit, unless excluded from permit requirements under statute or rule. Discharges made to waters of the U.S. via Municipal Separate Stormwater Sewer Systems (MS4s) or other conveyances also require coverage. AZPDES permits impose some limitations on pollutants that are discharged and are issued for no more than five years.

ADEQ is not requiring a specific AZPDES permit (or NPDES permit if issued by EPA), in order to allow the circumstances of the discharge to determine the appropriate permit (such as volume of discharge, location of discharge, or class of the reclaimed water). ADEQ believes the most likely permit to be used is the De Minimis General Permit (DMGP). The DMGP allows certain short-term and/or low volume discharges that meet the applicable surface water quality standards, are generally of limited flow and/or frequency, and do not last continuously for longer than 30 days unless approved in advance by ADEQ. Fees range from $250 from a one-time single source discharge to $500 for an area wide or project wide discharge. An annual fee of the same amount as the initial fee is assessed for permitted discharges over one year.

The DMGP sets some limitations such as for the amount of chlorine and E. coli that can be in the discharge water. Some classes of reclaimed water could potentially exceed the limits, so sampling may be required. A reclaimed water permittee will be able to consider if the potential costs of permit fees, additional treatment, or sampling outweigh the benefit of additional usage. For permittees that chose not to exercise the option, the rulemaking will not impose any additional cost.

G. Probable impact on public and private employment:

ADEQ does not anticipate that private or public employment will be directly affected by these rules.

H. Probable impact on small businesses:

ADEQ would use the small business definition in A.R.S. § 41-1001(21) of "a concern, including its

affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." Based on this definition, ADEQ estimates that more than half of the 364 privately-owned reclaimed water permittees are a small business.

1) **The administrative and other costs required for compliance with the proposed rule making.**
   This rulemaking removes a prohibition and allows some additional uses for a reclaimed water permittee. For permittees that choose to exercise the option and have some runoff of reclaimed water, they are required under A.R.S. § 49-255.01 to have permit coverage. AZPDES permit coverage imposes some costs, which a reclaimed water permittee can decide if the benefits outweigh the costs.
2) **A 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.**
   (i) Establish less costly schedules or less stringent deadlines for compliance, or consolidate or simplify the rule's compliance or reporting requirements in the proposed rule making.
   ADEQ is removing an outright prohibition and allowing discharge from runoff of reclaimed water if it is authorized by an AZPDES permit. Coverage under a NPDES or AZPDES permit is required under A.R.S. § 49-255.01 and the federal Clean Water Act for any discharge to waters of the U.S.
   (ii) Establish less costly compliance requirements, including establishing performance standards to replace design or operational standards in the proposed rule making.
   ADEQ's laws, rules, and permits must comply with federal Clean Water Act requirements.
   (iii) Exempt small businesses from any or all requirements of the proposed rule making.
   Coverage under a NPDES or AZPDES permit is required under A.R.S. § 49-255.01 and the federal Clean Water Act for any discharge to waters of the U.S.
3) **The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.**
   ADEQ does not anticipate that the rulemaking will directly impact private persons or consumers.

I. Probable effect on state revenues:

There could be a slight increase on state revenues due to increased AZPDES permit fees.

J. Description of less intrusive or less costly alternative methods of achieving the proposed rulemaking:

ADEQ is implementing a less intrusive method by removing an existing prohibition and allowing permittees the option to have runoff of reclaimed water that is permitted under an AZPDES permit.

K. Explanation of the limitations of the data available for this economic small business and consumer impact statement.

ADEQ generally does not track in a database certain information on permittees, such as whether publicly or privately owned and the type of reuse activity. Some of the information came from an informal review of past applications and permits.

reclaimed water produced by the facility meets the applicable standards for the class of water identified in subsection (C)(2)(a), and

ii. The total volume of reclaimed water generated for direct reuse.

d. Provision for cessation of delivery, if necessary, and storage or disposal if reclaimed water cannot be delivered for direct reuse.

Historical Note

Former Section R9-20-403 repealed, new Section R9-20-403 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-403 renumbered without change as Section R18-9-703 (Supp. 87-3). Editorial change to labels in subsection (c)(8) (Supp. 89-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

R18-9-704. General Requirements

A. Sewage treatment facility. Except for permits continued under R18-9-703(A), a sewage treatment facility owner or operator shall provide reclaimed water for direct reuse only under an individual Aquifer Protection Permit amended under R18-9-703(C)(2).

B. Additional treatment. If an owner or operator of a facility accepts reclaimed water and provides additional treatment for a higher quality direct reuse, the facility is considered a sewage treatment facility and shall operate under the requirements of an individual Aquifer Protection Permit amended under R18-9-703(C)(2).

C. Reclaimed water blending facility. An owner or operator of a reclaimed water blending facility shall not conduct blending operations without obtaining a Reclaimed Water Individual Permit or Reclaimed Water General Permit.

D. Reclaimed water agent. A person shall not operate as a reclaimed water agent without obtaining a Reclaimed Water Individual Permit or a Reclaimed Water General Permit.

E. End user. A person shall not directly reuse reclaimed water unless permitted under this Article.

F. Irrigating with reclaimed water. A permittee irrigating with reclaimed water shall:

1. Use application methods that reasonably preclude human contact with reclaimed water;
2. Prevent reclaimed water from standing on open access areas during normal periods of use;
3. Prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas; and
4. Secure hose bibbs discharging reclaimed water to prevent use by the public.

G. Prohibited activities.

1. Irrigating with untreated sewage;
2. Providing or using reclaimed water for any of the following activities:
   a. Direct reuse for human consumption;
   b. Direct reuse for swimming, wind surfing, water skiing, or other full-immersion water activity with a potential of ingestion; or
   c. Direct reuse for evaporative cooling or misting.
3. Misapplying reclaimed water for any of the following reasons:
   a. Application of a stated class of reclaimed water that is of lesser quality than allowed by this Article for the type of direct reuse application;
   b. Application of reclaimed water to any area other than a direct reuse site; or
   c. Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, except for agricultural return flow that is directed onto an adjacent field or returned to an open water conveyance.

H. A permittee shall place and maintain signage at locations specified in Table 1 so the public is informed that reclaimed water is in use and that no one should drink from the system.

Table 1. Signage Requirements for Direct Reuse Sites

Reclaimed Water Class	Hose Bibbs	Residential Irrigation	Schoolground Irrigation	Other Open Access Irrigation	Restricted Access Irrigation	Mobile Reclaimed Water Dispersal
A+	Each bibb	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	Back of truck or on tank
A	Each bibb	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	Back of truck or on tank
B+	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use 3. Notice on golf score cards, if applicable	Back of truck or on tank
B	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use 3. Notice on golf score cards, if applicable	Back of truck or on tank
C	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use	Back of truck or on tank

Note: All impoundments with open access including lakes, ponds, ornamental fountains, waterfalls, and other water features shall be posted with signs regardless of the class of reclaimed water.

Historical Note

Former Section R9-20-404 repealed, new Section R9-20-404 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-404 renumbered without change as Section R18-9-704 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

49-203. Powers and duties of the director and department

A. The director shall:
   1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
   2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
   3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.
   4. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
   5. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
   6. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
   7. Adopt, by rule or as permit conditions, such discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and such other standards and conditions as are reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.
   8. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D, shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.
   9. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.
   10. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.
   11. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case by case basis, taking into account site conditions and operational factors.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as is reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.
2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3 or 3.1 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.
3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.
4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.
5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.
6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.
7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.
8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.

D. The director shall integrate all of the programs authorized in this section and such other programs affording water quality protection that are administered by the department for purposes of

administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

ARIZONA COMMISSION FOR THE DEAF AND THE HARD OF HEARING (R-16-0603)
Title 9, Chapter 26, Commission for the Deaf and the Hard of Hearing

Repeal	Article 1
Renumber	R9-26-101
Renumber	R9-26-201
Amend	R9-26-201
Renumber	R9-26-202
Amend	R9-26-202
Renumber	R9-26-203
Amend	R9-26-203
Renumber	R9-26-204
Amend	R9-26-204
Renumber	R9-26-205
Amend	R9-26-205
Renumber	R9-26-206
Renumber	R9-26-207
New Section	R9-26-207
Repeal	R9-26-301
Renumber	R9-26-301
Amend	R9-26-301
Repeal	R9-26-302
Renumber	R9-26-302
Repeal	R9-26-303
Renumber	R9-26-303
Amend	R9-26-303
Renumber	R9-26-304
Amend	R9-26-304
Amend	R9-26-501
Amend	R9-26-502
Amend	R9-26-503
Amend	R9-26-504
Amend	R9-26-505
Amend	R9-26-506
Amend	R9-26-507
Amend	R9-26-508
Amend	R9-26-509
Amend	R9-26-510
Repeal	R9-26-511
New Section	R9-26-511
Amend	R9-26-512
Renumber	R9-26-515
New Section	R9-26-515
Renumber	R9-26-516
Amend	R9-26-517
Amend	R9-26-518

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: E-3**

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

FROM: Chris Kleminich, Staff Attorney

DATE: May 20, 2016

SUBJECT: **ARIZONA COMMISSION FOR THE DEAF AND HARD OF HEARING (R-16-0603)**
Title 9, Chapter 26, Article 1, General; Article 2, Telecommunications Equipment Distribution Program; Article 3, Administrative Procedures; Article 5, Interpreter Licensure and Regulation

Amend: R9-26-201; R9-26-202; R9-26-203; R9-26-204; R9-26-205; R9-26-301; R9-26-303; R9-26-304; R9-26-501; R9-26-502; R9-26-503; R9-26-504; R9-26-505; R9-26-506; R9-26-507; R9-26-508; R9-26-509; R9-26-510; R9-26-512; R9-26-517; R9-26-518

New Section: R9-26-207; R9-26-511; R9-26-515

Renumber: R9-26-101; R9-26-201; R9-26-202; R9-26-203; R9-26-204; R9-26-205; R9-26-206; R9-26-207; R9-26-301; R9-26-302; R9-26-303; R9-26-304; R9-26-515; R9-26-516

Repeal: Article 1; R9-26-301; R9-26-302; R9-26-303; R9-26-511

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

The purpose of the Arizona Commission for the Deaf and Hard of Hearing (Commission) is to "act as a bureau of information to the deaf and the hard of hearing and state agencies that provide services to the deaf and the hard of hearing and to protect the public by regulating the practice of interpreting." Laws 2010, Ch. 20, § 3.

The Commission indicates that this rulemaking is the end result of a multi-year effort. The Commission's initial rulemaking efforts were interrupted in 2009 by the initial rulemaking moratorium. Changes proposed then, as well as issues identified in the Commission's 2012 five-year-review report, are addressed in this rulemaking.

Article Contents, Including the Subject Matter of Each Rule Affected

Article 1 contains one rule, related to definitions, that is being renumbered.

Article 2 contains six rules, related to the Telecommunications Equipment Distribution Program (TEDP), all of which are affected by this rulemaking. The rules address eligibility; the application process; persons authorized to certify the need for telecommunications equipment; vouchers; redeeming vouchers; and confidentiality.

Article 3 contains three rules, related to administrative procedures, all of which are affected by this rulemaking. The rules address hearings; informal settlement conferences; and rehearing or review of decisions.

Article 5 contains sixteen rules, related to interpreter licensure and regulation, all of which are affected by this rulemaking. The rules address definitions; license applications; applications for generalist interpreter licenses; applications for legal interpreter licenses; applications for provisional interpreter licenses; short-term registrations of interpreters; license renewal; licensing fees; procedures for processing applications, time frames; continuing education requirements; audits of compliance with continuing education requirements; making a complaint; hearing procedures; rehearing or review of commission decisions; disciplinary actions; and changes of name or address.

Year that Each Rule was Last Amended or Newly Made

- May 1, 2007: Article 5
- November 18, 2002: Article 1, Article 2
- September 15, 2000: Article 3

Proposed Action

The following is a non-exhaustive summary of the actions being taken by the Commission in this rulemaking:

- Section 101: The rule, providing definitions for the Chapter, is being renumbered. Accordingly, Article 1 is being repealed.
- Section 201: Definitions, formerly found in Section 101, are being added and deleted.
- Section 202: The rule, related to eligibility for the TEDP, is being clarified to note that a person must be lawfully present in the United States in order to be eligible for equipment through the TEDP.

- Section 203: The rule, related to the application process for the TEDP, is being clarified to note that a person must provide specified documentation of citizenship or alien status indicating that the individual is lawfully present in the United States.
- Section 204: A non-substantive clarifying change is being made.
- Section 205: Non-substantive clarifying changes are being made.
- Section 206: Non-substantive clarifying changes are being made.
- Section 207: The rule, related to confidentiality, is being newly made.
- Section 301: The rule, related to hearings, is being repealed. The rule on hearing procedures will now be located in Section 302.
- New Section 301: The rule, related to complaints, is being renumbered from Section 512. A non-substantive clarifying change is being made.
- Section 302: The rule, related to informal settlement conferences, is being repealed.
- New Section 302: The rule provides that the Commission shall conduct all hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- Section 303: The rule, related to rehearing or review, is being repealed and replaced by Section 516, which is being renumbered.
- New Section 303: The rule is being renumbered from Section 516. Subsection H is being added, which provides that "[i]f the Commission makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Commission shall issue the decision as a final decision without an opportunity for rehearing or review." Clarifying changes are also being made.
- Section 304: Non-substantive clarifying changes are being made.
- Section 501: Definitions, applicable to the Article, are being modified.
- Section 502: The rule, which lays out requirements for information that must be included in a license application, is being modified.
- Section 503: The rule, related to applications for generalist interpreter licenses, is being modified to expand the types of certifications that are deemed appropriate by the Commission.
- Section 504: The rule, related to applications for legal interpreter licenses, is being amended to add the Board for Evaluation of Interpreters (BEI) as an acceptable certifying entity. The Commission indicates that this is a necessary step, as the two existing certifying entities, the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf (RID), are not currently providing certification examinations. Clarifying changes are also being made.
- Section 505: The rule, related to applications for provisional interpreter licenses, is being modified to accept NAD and BEI programs and examinations, and to make minor changes to the application process. Clarifying changes are also being made.
- Section 506: The rule, related to short-term interpreter registrations, is being clarified and expanded. Short-term registrations allow a certified interpreter, who is not licensed in Arizona, to provide interpreting services in Arizona in a non-legal situation for fewer than 20 days in a year. Subsection (E) is arguably the most significant addition to the rule, as it prohibits the Commission from issuing more than two short-term registrations to an interpreter during the interpreter's lifetime.

- Section 507: The rule, related to license renewal, is being clarified and expanded.
- Section 508: The rule, related to fees and charges, is being modified. While no new fees are being created by this rulemaking, the Commission is establishing a $25 charge for replacement of a licensee's identification badge, which will be required under Section 515. In addition, the Commission is deleting the portion of the rule that relates to pro-rated license renewal application fees.
- Section 509: Non-substantive clarifying changes are being made.
- Section 510: The rule, related to continuing education (CE), is being clarified and expanded. Of particular note are the additions of subsection (C), related to waiver of the CE requirement, and subsection (D), related to extensions of time to complete the CE requirement.
- Section 511: The rule, previously related to CE compliance audits, is being rewritten. The rule now relates to the provision of video remote interpreting (VRI).
- Section 512: The rule, related to complaints, can now be found as New Section 302.
- Section 515: The rule, previously related to hearing procedures, is being rewritten. The rule now requires licensees to possess an identification badge issued by the Commission whenever the licensee provides interpreting services.
- Section 516: The rule, related to rehearing or review, can now be found as New Section 303.
- Section 517: The rule, related to disciplinary action, can now be found as Section 304.
- Section 518: The rule, previously related to name or address changes, is being rewritten. The rule now relates to required notices that licensees must, in particular circumstances, provide to the Commission.

Summary of Reasons for the Proposed Action

The Commission is amending all of its rules to improve effectiveness and clarity, and to complete the course of action proposed in its 2012 five-year-review report.

Exemption or Request and Approval for Exception from the Moratorium

The Commission received an exception from Executive Order 2015-01 on June 26, 2015 and an exception from Executive Order 2016-03 on May 20, 2016.

Substantive or Procedural Concerns

None.

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

Yes. The Commission cites to A.R.S. § 36-1946(1), (2), and (3) as general authority for the rules. A.R.S. § 36-1946 requires the Commission to adopt rules necessary to achieve the purposes of A.R.S. § 12-242 [related to legal interpreters], to make rules classifying interpreters for the deaf and the hard of hearing based on the level of interpreting skills acquired by that

person, and to make rules establishing standards and procedures for the qualification and licensure of each classification of interpreters.

As specific authority for the rules, the Commission cites to A.R.S. §§ 36-1947 [related to the Telecommunications Equipment Distribution Program], 36-1971 [related to interpreter licensure generally], 36-1973 [related to qualifications for licensure], 36-1974 [related to license issuance and renewal], 36-1975 [related to denial of licensure], and 36-1976 [related to license revocation or suspension].

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rules are generally clear, concise, and understandable.

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

Yes. The Commission indicates that it received written comments on the rulemaking from ten individuals. In addition, the Commission indicates that six individuals attended an oral proceeding on March 17, 2016.

On pages 6-15 of the Notice of Final Rulemaking (NFR), the Commission summarizes the comments received, and provides responses to those comments. Staff believes that the Commission has adequately addressed, and responded to, comments on the proposed rules.

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

No. A description of the changes made between the proposed rulemaking and the final rulemaking can be found on pages 4-6 of the NFR. Changes have been made based on feedback from the public and from Council staff. In staff's opinion, the final rules are not a substantial change, considered as a whole, from the proposed rules.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

No. The Commission indicates that it did not review or rely on any study for this rulemaking.

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

No. While the Americans with Disabilities Act applies to individuals who are deaf or hard of hearing, the Commission indicates that no federal laws directly correspond to this rulemaking.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

Yes. The Commission indicates that the licenses described in Sections 503 through 507 are general permits consistent with A.R.S. § 41-1037, as they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

No. The rules do not establish a new fee or contain a fee increase. The Commission is modifying Section 508, related to fees, by establishing a $25 charge for replacement of a licensee's identification badge. In addition, the Commission is deleting the portion of the rule that relates to pro-rated license renewal application fees.

9. Conclusion

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

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: E-3**

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

FROM: GRRC Economic Team

DATE: May 20, 2016

SUBJECT: **ARIZONA COMMISSION FOR THE DEAF AND HARD OF HEARING (R-16-0603)**
Title 9, Chapter 26, Article 1, General; Article 2, Telecommunications Equipment Distribution Program; Article 3, Administrative Procedures; Article 5, Interpreter Licensure and Regulation

Amend: R9-26-201; R9-26-202; R9-26-203; R9-26-204; R9-26-205; R9-26-301; R9-26-303; R9-26-304; R9-26-501; R9-26-502; R9-26-503; R9-26-504; R9-26-505; R9-26-506; R9-26-507; R9-26-508; R9-26-509; R9-26-510; R9-26-512; R9-26-517; R9-26-518

New Section: R9-26-207; R9-26-511; R9-26-515

Renumber: R9-26-101; R9-26-201; R9-26-202; R9-26-203; R9-26-204; R9-26-205; R9-26-206; R9-26-207; R9-26-301; R9-26-302; R9-26-303; R9-26-304; R9-26-515; R9-26-516

Repeal: Article 1; R9-26-301; R9-26-302; R9-26-303; R9-26-511

I reviewed the economic, small business, and consumer impact statement (hereafter referred to as EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

GRRC Economist comments:

The amendments are primarily intended to update certification and licensure requirements for deaf and hard of hearing interpreters. Many of the rule changes under review were initially identified for revision in 2009, but amendments were not completed due to the

moratorium. The Commission's November 2012 five-year-review report also identified specific rules that required amendment that are addressed as part of this package.

There are more than 1.1 million deaf and hard of hearing individuals throughout the state. The Commission serves the needs of these Arizonans with hearing loss. This is accomplished through activities such as establishing rules for interpreter licensure, information and referral services to assist hard of hearing consumers, and outreach and education (e.g., for 9-1-1 operators).

The proposed rules address interpreter licensing provisions. Examples of the types of amendments addressed in the proposed rulemaking include:

- Adding the Board of Evaluation of Interpreters (BEI) as an acceptable certifying entity.
  As it is currently is not possible to be certified by National Association of the Deaf (NAD) or the Registry of Interpreters for the Deaf (RID), the Commission is adding the BEI as an acceptable certifying entity.

- Establishing standards for video remote interpreting (VRI).
  There are no prescribed standards issued by any governing body for VRI. In order to operate effectively, VRI providers must establish call centers with high speed internet, high resolution monitors and video conferencing equipment, and some form of call routing software. In order to comply with licensure law, VRI providers will have to have the routing capabilities to send Arizona calls to only those interpreters who hold an Arizona license. Because many other states throughout the country already require that VRI interpreters be licensed in their respective states and calls be routed according to interpreter qualifications, most VRI providers have the requisite routing technology. The Commission does not anticipate difficulty in meeting the proposed standards.

- Requiring legal interpreters to obtain a RID legal certification within five years.
  Currently, 15 of the 59 legal interpreters licensed by the Commission also hold a legal certification. Obtaining a legal certification from BEI requires 48 hours of legal training and examination costs of $335. If a Legal A licensed interpreter does not obtain the BEI certification within five years, they will be reclassified as a Legal C interpreter, which results in the interpreter being unable to work in a legal setting unless teamed with a certified Legal A interpreter. This amendment is intended to ensure that deaf and hard of hearing individuals involved in legal proceedings have qualified interpreters and is in line with practices in some of the State's larger court systems. For example, the current hiring practices in the Maricopa County Superior Court system require interpreters to have a legal certification.

- Increasing the hours of required paid interpreting and required legal training for legal interpreters.
  The amendments increase paid interpreting hours required for Class D legal interpreters from 25 to 500 hours. The increase in hours is part of an effort to improve the quality of interpreting in a legal setting. The Commission reports that the interpreter community believes it is reasonable to obtain 500 hours of paid interpreting in 5 years. In addition,

the amendments also increase the legal training hours required for Class C and D legal interpreters from 25 to 50 hours.

- Allowing only two short-term registrations during the interpreter's lifetime.
  The amendment addresses Commission concerns that some interpreters are working without obtaining a license. Since 2007, 303 interpreters have obtained a short-term registration. The Commission's records indicate that 12% of the registrants account for 26% of the registrations. Interpreters working under a short-term registration will be impacted by the licensing fee charged by the Commission to become fully licensed. However, this change will benefit the deaf and hard of hearing public, as the rule establishes a mechanism to prevent individuals lacking the qualifications to become fully certified from operating with a short-term registration for an extended amount of time.

- Increasing the time an interpreter may work under a Provisional License from three to five years.
  Interpreters are required to pass a written and performance exam in order to become certified. In order to obtain a Provisional License, interpreters must pass the written exam. After passing the written exam and verifying eligibility to test, interpreters may take the performance exam. The performance exam is very challenging and many interpreters find it difficult to pass when they are new to the field. It generally takes at least three years of working with a mentor and gaining experience in the field in order to be adequately prepared to pass the certification performance exam. However, some interpreters are still not adequately prepared at the end of three years. Public feedback indicated that more time to prepare for the performance exam was needed.

The Commission has certified that the Joint Legislative Budget Committee has not been notified because the number of new full-time employees necessary to implement and enforce the rule is zero. Notice of new FTEs is required by A.R.S. § 41-1055(B)(3)(a).

1. **<u>Costs and Benefits for:</u>**

a. The implementing agency:

The Commission is the only state agency directly affected by this rulemaking. The Commission incurred the cost of drafting the proposed rule amendments and will incur the cost of implementing them within existing resources.

b. Political subdivisions:

The rules do not directly affect political subdivisions.

c. Businesses:

The businesses impacted are individual interpreters, which would meet the definition of a small business. See below for a more detailed discussion of the impact of the rules on individual interpreters.

d. Small businesses:

The small businesses impacted by this rulemaking are individual interpreters. Costs resulting from this rulemaking that will impact interpreters include the cost of submitting an initial and renewal application, submitting a photograph for use in an identification badge, obtaining the education and work experience necessary for licensure, passing a certification examination, taking the continuing education needed to maintain certification, and paying a fee for initial and renewal licensure.

e. Consumers directly affected by the rulemaking:

The amendments will benefit the public by having rules that are consistent with industry standards, provide an avenue for Arizona interpreters to obtain a certification necessary for licensure, and ensure qualified interpreters are available to assist deaf and hard of hearing citizens of Arizona.

2. Do the probable benefits outweigh the probable costs?

Based on the information provided above, the Commission indicates that the benefit of implementing the proposed amendments to interpreter licensure rules outweighs any potential costs.

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

The amendments represent the most cost-effective and efficient method of fulfilling the Commission's responsibilities and ensuring that interpreting services received by Arizonans who are deaf or hard of hearing is of excellent quality.

4. The probable effect on state revenues:

The Commission does not anticipate that the amendments will have a direct impact on state revenue.

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

The Commission did not consider other alternatives because the proposed rules represent the most cost effective and efficient method of fulfilling the Commissions statutory responsibility to license qualified interpreters. In addition, the Commission believes that the rule amendments result is greater flexibility in the licensing process and maximizes the opportunities for all qualified interpreters to become licensed.

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No analysis was submitted that compares the rule's impact of the competiveness of businesses in this state to the impact on businesses in other states.

7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.

The Commission indicates that no outside data or studies were used in the development of the rules.

8. Conclusion:

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the rules be approved.

Doug Ducey
Governor

Arizona Commission
for the deaf and the hard of hearing

Sherri L. Collins
Executive Director

100 N 15th Avenue ✷ Suite 104 ✷ Phoenix, AZ 85007
acdhh.org

April 18, 2016

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

Re: A.A.C. Title 9. Health Services
Chapter 26. Commission for the Deaf and Hard of Hearing

Dear Ms. Ong:

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

A. Close of record date: The rulemaking record was closed on March 18, 2016, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

B. Relation of the rulemaking to a five-year-review report: The rulemaking relates to a five-year-review report approved by the Council on November 6, 2012.

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

D. Fee increase: The rulemaking does not increase an existing fee.

E. Immediate effective date: An immediate effective date is not requested.

F. Certification regarding studies: I certify that the preamble accurately discloses that the Commission did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

F. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

G. List of documents enclosed:
   1. Cover letter signed by the Executive Director;
   2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
   3. Economic, Small Business, and Consumer Impact Statement

Doug Ducey
Governor

Arizona Commission
for the deaf and the hard of hearing

Sherri L. Collins
Executive Director

100 N 15th Avenue ✷ Suite 104 ✷ Phoenix, AZ 85007
acdhh.org

4. Public comments
5. Exemption from Executive Order 2015-01

Sincerely,

Sherri Collins
Executive Director

602-364-0990 TTY ✷ 602-542-3323 V ✷ 480-559-9441 VP ✷ 800-352-8161 V/TTY ✷ 602-364-0581 FAX ✷ info@acdhh.az.gov

The mission of the Arizona Commission for the Deaf and the Hard of Hearing is to ensure, in partnership with the public and private sectors, accessibility for the deaf, deaf-blind, hard of hearing, and persons with speech difficulties to improve their quality of life.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
Article 1	Repeal
R9-26-101	Renumber
R9-26-201	Renumber
R9-26-201	Amend
R9-26-202	Renumber
R9-26-202	Amend
R9-26-203	Renumber
R9-26-203	Amend
R9-26-204	Renumber
R9-26-204	Amend
R9-26-205	Renumber
R9-26-205	Amend
R9-26-206	Renumber
R9-26-207	Renumber
R9-26-207	New Section
R9-26-301	Repeal
R9-26-301	Renumber
R9-26-301	Amend
R9-26-302	Repeal
R9-26-302	Renumber
R9-26-303	Repeal
R9-26-303	Renumber
R9-26-303	Amend
R9-26-304	Renumber
R9-26-304	Amend
R9-26-501	Amend
R9-26-502	Amend

R9-26-503	Amend
R9-26-504	Amend
R9-26-505	Amend
R9-26-506	Amend
R9-26-507	Amend
R9-26-508	Amend
R9-26-509	Amend
R9-26-510	Amend
R9-26-511	Repeal
R9-26-511	New Section
R9-26-512	Amend
R9-26-515	Renumber
R9-26-515	New Section
R9-26-516	Renumber
R9-26-517	Amend
R9-26-518	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. § 36-1946(1), (2), and (3)

Implementing statute: A.R.S. §§ 36-1947, 36-1971, 36-1973, 36-1974, 36-1975, and 36-1976

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 21 A.A.R. 1493, August 7, 2015

Notice of Public Information: 21 A.A.R. 1498, August 7, 2015

Notice of Proposed Rulemaking: 22 A.A.R. 177, February 5, 2016

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

Name: Carmen Green, Deputy Director

Address: Commission for the Deaf and the Hard of Hearing
100 N. 15th Ave., Suite 104
Phoenix, AZ 85007

Telephone: (602) 542-3362

Fax: (602) 542-3380

E-mail: C.green@acdhh.az.gov

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

The Commission is completing a rulemaking that was interrupted in 2009 by successive rulemaking moratoriums. The rulemaking also makes changes that result from eight years' experience using its licensing rules. The Commission is also addressing issues identified in the Commission's five-year-review report approved by Council on November 6, 2012.

As of June 30, 2005, the National Association of the Deaf stopped giving certification examinations. Certifications issued by NAD before June 30, 2005, remain valid but it currently is not possible to be certified by NAD. Additionally, as of January 1, 2016, the Registry of Interpreters for the Deaf has imposed a moratorium on providing certification examinations. Although certifications issued by RID before January 1, 2016, remain valid, it currently is not possible to be certified by RID. The Commission is adding the Board for Evaluation of Interpreters as an acceptable certifying entity.

An exemption from Executive Order 2015-01 was provided to the Commission by Ted Vogt, Chief of Operations in the Governor's office, in an e-mail dated June 26, 2015.

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

The Commission did not review or rely on any 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:

Most of the changes made in this rulemaking will have minimal economic impact. The Commission believes the following will have minimal economic impact:

- Using the date of license issuance rather than the licensee's birthday as the start of the licensee's license year;
- Adding the BEI as an acceptable certifying entity;
- Eliminating Class B as a category of legal interpreters. There currently are no Class B legal interpreters;
- Providing standards for video remote interpreting; and
- Requiring licensees to have while working an identification badge provided by the Commission and to present the badge on request; and
- Except for provisional licensees, relying on the certifying entity to monitor compliance with continuing education.

The Commission believes the following changes will have some economic impact:

- Requiring Class A legal interpreters who do not have a legal certification from RID to obtain legal certification from an acceptable certifying entity within five years;
- Increasing the hours of required paid interpreting from 25 to 500 for Class D legal interpreters;
- Increasing the hours of required legal training from 24 to 50 for Class C and D legal interpreters;
- Limiting the number of short-term registrations to two during an interpreter's lifetime;
- Clarifying that, like a licensee, a short-term registrant is required to be certified;
- Limiting a generalist interpreter to working in a legal setting only when appointed by a judge;
- Increasing the time an interpreter may work under a provisional license from three to five years; and
- Requiring a provisional licensee to submit evidence of compliance with the CE requirement at the time of annual license renewal rather than using compliance audits.

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

In addition to the changes described in item 11, none of which is substantial, the Commission made the following changes:

R9-26-501: Indicated the CDI is a certification issued by BEI as well as RID and added a definition of "Level III, IV, and V."

R9-26-503(2)(a): Added BEI Levels III, IV, and V as acceptable certifications.

R9-26-503(2)(b): Added BEI CDI as acceptable certification.

R9-26-504(A)(1)(b): Added BEI Levels IV and V as acceptable certifications.
R9-26-504(A)(1)(c): Added BEI Levels III, IV, and CDI as acceptable certifications.

At the informal meetings held with stakeholders during the process of preparing the proposed rules, the Commission indicated that because neither NAD nor RID currently offers certification examinations, the Commission was adding BEI as an acceptable certifying entity and would recognize certifications issued by BEI. This decision was highly supported by stakeholders who were concerned about their ability to obtain certification.

When a certifying entity changes its certification examination, it generally changes the names attached to the certifications. In this way, it is possible to determine from the certification held which examination a certificate holder took. Certifications obtained by taking a previous iteration of an examination remain valid after a new examination is placed in use. When the Commission added BEI and its certifications to the rules, it inadvertently omitted the names of the certifications issued under a previous iteration of the BEI examination. This change clarifies that BEI certifications obtained by taking the previous iteration of the examination are acceptable to the Commission.

Under A.R.S. § 41-1025(B), this change is not substantial because:
All BEI certificate holders understood the proposed rule affected their interest. Because the particular iteration of examination taken and the name attached to the certificate does not affect the validity of a BEI-issued certification, all BEI certificate holders understood the Commission was accepting BEI certification for licensure purposes.

The subject matter of the proposed and final rules is the same. Both address that BEI certification is acceptable to the Commission for licensure purposes.

The effect of the proposed and final rules is the same. BEI certification is acceptable to the Commission for licensure purposes.

Other non-substantive changes include:
R9-26-503(2)(a) through (c): The phrase “or other certification deemed appropriate by the Commission” was added at the end of each subsection and then deleted from subsection (2)(d);
R9-26-504(A)(1)(c): The phrase “or other certification deemed appropriate by the Commission” was added at the end of the subsection because it had been inadvertently omitted; and

R9-26-511(A): The word “only” was moved to follow “VRI.” This eliminates duplication between subsections (A) and (C) and clarifies that the Commission has authority to authorize licensees to provide VRI only to individuals located in Arizona.

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

Before publishing the Notice of Proposed Rulemaking, the Commission held a series of four informal meetings at which interested persons were invited to comment on the proposed rules, which were posted on the Commission’s web site. The meetings were held throughout the state and attended by approximately 100 persons. Many excellent questions were asked and comments made. As a result, the proposed rules were changed to the form published.

Six individuals attended an oral proceeding held on March 17, 2016. Written comments regarding the proposed rules were submitted by Raymond Baesler, LaDonna Gabrielson, Jasmine Marin, SueAnne McCreery, Michelle Mire, Corinna Moore, Darlene Paul, Julie Roles, Deb Stone, and Cindy Volk. The comments and the Commission’s analysis and response follow:

COMMENT	ANALYSIS	RESPONSE
R9-26-501: Class A Legal Interpreter—change the wording to “…a legal interpreter who provides interpreting in all proceedings of an Arizona court of law or any other legal environment…?	The suggested language is not accurate. Statute specifies the circumstances requiring a legal interpreter. The cross reference to statute ensures the definition is accurate.	No change
R9-26-501: The date by which all Class A Legal interpreters must have the required specialist certification should be changed to January 1, 2020, rather than January 1, 2021, to align with the credentialing deadline for interpreters issued by the Arizona Supreme Court.	The Class A Legal interpreters to whom the new certification requirement applies are already credentialed, as required by the Arizona Supreme Court. Reducing the amount of time to meet the new certification requirement would impose an unnecessary burden on current Class A Legal interpreters.	No change

R9-26-501: Legal training—change the wording to "…such as, but not limited to…" to clarify the included list is not all encompassing.	The phrase "such as" indicates the list is an example of accepted trainings but is not all encompassing. The phrase "but not limited to" is redundant and unnecessary.	No change
R9-26-501: Platform or performance setting—remove "involving a raised surface" because not all performance interpreting involves a raised surface.	The comment is correct.	The definition was amended.
R9-26-501: Class B Provisional interpreter—replace "except in medical, mental health, platform or performance, or legal setting" with "in limited settings. Rewrite the second sentence "A Class B provisional interpreter may only provide interpreting services … when working as part of a team…"	The phrase "in limited settings" is vague and not clearly enforceable. In the second sentence, the adverb "only" is correctly placed. The suggested rewrite changes the meaning.	No change
R9-26-501: A provisional B licensee should be able to provide interpreting in a medical setting including an intake in a mental health setting.	Medical and mental health settings require specialized interpreting skills. It is necessary for an interpreter to obtain the necessary skills, verified through certification, before working in a medical or mental health setting. This requirement was added based on feedback from the community and the desire to protect the public from unqualified interpreters working in situations with potentially serious consequences.	No change

R9-26-503: Is it accurate that the Commission will now accept BEI certification for a Generalist Interpreter License?	Yes. The Commission will also accept certain BEI certifications for licensure as a legal interpreter.	No change
R9-26-504(A)(1)(a): Is it accurate that Legal Class A requires a SC:L or BEI Legal certification?	The subsection indicates that another legal specialist certification deemed appropriate by the Commission is acceptable. At the moment, no other legal specialist certification is deemed appropriate but the Commission is open to learning of one.	No change
R9-26-504(A)(1)(b): Do not remove the Legal B category. Instead, clarify its purpose.	The original purpose of the Legal B category was to allow an interpreter working towards a specialization in legal interpreting to work in "quasi-legal" settings. However, the Commission does not have statutory authority to define any setting as "legal" or "quasi-legal" that is not listed in A.R.S. § 12-242. Because of this, it was apparent that the Legal B category had no purpose that was not being met by the Legal C category.	No change
R9-26-504(A)(1)(b): Is it accurate that Legal Class C can only work when teamed with a Legal Class A?	This is accurate when the Legal Class C interpreter is working in a legal setting. A Legal Class C interpreter may work independently in a setting that does not require legal specialist certification.	No change

Does the Commission intend to include the Medical Certificate offered by BEI?	BEI does not yet offer a medical certification. Additionally, a medical certification is a specialty certification so anyone who obtains it will already have another certification and be qualified for licensure by the Commission. As written, the Commission's rule provides flexibility so when BEI offers medical certification, the Commission could accept it even though statute does not specify the Commission is to provide a medical specialty license.	No change
Because the BEI written test includes no ethics portion, does the Commission intend to require an ethics workshop for applicants who have passed only the BEI written test?	No. The Commission requires an interpreter to have 40 to 80 hours of interpreter education and training before applying for a provisional license. The Commission believes the existing requirement is sufficient.	No change
BEI requires only an associate's degree or equivalent hours to take the written test. The Commission needs to require proof of a bachelor's degree for licensure.	The Commission believes requiring a Bachelor's degree for licensure would substantially and unnecessarily limit the pool of qualified interpreters who are certified and have been working in the field for many years. Additionally, the Commission knows of no empirical evidence that validates the need for a Bachelor's degree to interpret effectively.	No change

The BEI examination tests skill in transliterating. People need to be aware of and prepare for this portion of the examination.	A comprehensive study guide created by the developers of the BEI examination is available online. Interpreters will be able to access information regarding the examination and training opportunities to prepare for the examination.	No change
R9-26-505(A)(1): Add programs and training approved by NAD and BEI. If we accept their certifications, we should also accept the trainings they offer.	The Commission agrees.	The phrase “NAD, or BEI” was added at the end of the subsection.
R9-26-505(B)(1)(c): Require mentors to provide written feedback to the Provisional B interpreter.	The Commission does not want to micro-manage the mentoring relationship. A mentor/mentee may choose to discuss the work immediately after the fact or communicate about it later. If they discuss the work, it is the mentee’s responsibility to create a record of the feedback.	No change
R9-26-505(B)(2)(a) and (B)(3)(a) through (c): Combine these subsections.	R9-26-505(B)(2) refers to requirements for team interpreting. R9-26-505(B)(3) refers to requirements for mentoring. These are two very different issues. Combining the subsections would cause confusion.	No change
R9-26-506: Two short-term registrations in a lifetime really locks us in. A different term such as two short-term registrations every five years would be better.	The Commission believes interpreters who work regularly in Arizona should apply for and maintain a license.	No change

R9-26-506(A) and (B): Switch the order of these subsections so it is clear certification is required before applying for a short-term registration.	The order of the subsections is the same as used in all other Sections dealing with applications.	No change
R9-26-506(A)(4) and (A)(5): Combine these subsections into one.	Current rule-writing standards require that a list of more than three items be set out in different subsections. By itself, subsection (A)(5) contains three items. Therefore, it cannot be combined with another subsection.	No change
R9-26-506(E): Clarify the time frame for issuing two short-term registrations	The implied time frame is the interpreter's lifetime. Clarification was added.	The phrase "in the interpreter's lifetime" was added at the end of the subsection.
R9-26-506(E): Allow out-of-state interpreters to obtain an unlimited number of 20-day registrations. Apply the limit of two short-term registrations only to in-state interpreters.	The limitation was based on comments at public meetings by interpreters and members of the deaf community who were concerned the short-term registration was being used by interpreters wanting to avoid or not qualified for licensure. The Commission is concerned about all interpreters, regardless of location, who repeatedly provide interpreting services in Arizona without being licensed.	No change
R9-26-507(A)(1)(g): To protect stakeholders, the Commission should request information regarding disciplinary action within the last five years rather than the last year.	Applicants are asked about their entire history at the time of initial license application so the Commission has information greater than the last five years on record. At the time of annual	No change

	renewal, a licensee submits information regarding the previous year only because that is the only information the Commission will not already have on file.	
R9-26-507(A)(1)(h): To protect stakeholders, the Commission should request information regarding license denial within the last five years rather than the last year.	See response re R9-26-507(A)(1)(g).	No change
R9-26-507(A)(1)(i): To protect stakeholders, the Commission should request information regarding felony offenses within the last five years rather than the last year.	See response re R9-26-507(A)(1)(g).	No change
R9-26-507(A)(1)(j): To protect stakeholders, the Commission should request information regarding being adjudicated insane or incompetent within the last five years rather than the last year.	See response re R9-26-507(A)(1)(g).	No change
R9-26-507(A)(1)(j): An interpreter who has ever been adjudicated insane or incompetent should not be granted a license due to ethical concerns.	The ethical concern at issue in this comment is violation of the Americans with Disabilities Act. The issue regarding any applicant is whether the applicant is able to provide interpreting competently and safely.	No change
R9-26-507(B)(3)(f)(i): By combining R9-26-505(B)(2)(a) and (B)(3)(a) through (c), the Commission would be required to	The Commission already explained why this combination cannot be done.	No change

list only one letter under R2-26-(B)(3)(f)(i).		
R9-26-507(B)(3)(f)(ii): Change the requirement to upgrade from a Provisional C to a Provisional B from 500 hours to 1,500 hours to protect the public by ensuring the interpreter has sufficient experience.	First, a Provisional C interpreter is eligible to upgrade to Provisional B only at the time of license renewal, which means the Provisional C has been licensed at least one year. Second, the Provisional C is required to gain the 500 hours of experience while teamed with a certified licensed interpreter. The Commission believes this is sufficient to protect the public. Furthermore, increasing the amount of experience required would create an insurmountable barrier for many interpreters, especially those working in rural areas who have limited opportunity to team with a certified licensed interpreter.	No change
R9-26-507(B)(5): Does this new provision mean that an individual whose provisional license lapsed because the individual did not pass the NIC can apply for a provisional license if the individual did not hold the lapsed provisional license for five years?	Yes. An interpreter may hold a provisional license for five years. The five years may or may not be consecutive.	No change
R9-26-507(B)(5): Allow an interpreter to hold a provisional license for any length of time as long as the interpreter remains eligible by the examination	This suggestion has been extensively discussed at public meetings and is overwhelmingly opposed by both interpreters and members of the deaf community.	No change

authority to take a certification examination.	Allowing an individual to work under a provisional license for an unlimited amount of time is inconsistent with the legislative intent for requiring licensure, which is to protect the public by upholding higher standards for interpreters. Under this rulemaking, the amount of time for working under a provisional license is increased from three to five years. The Commission believes this is a generous amount of time in which to expect a licensee to obtain certification for a general license.	
R9-26-510(A)(1) through (3): The wording is vague; there is no mention of legal training required for certification; and there is no mention of the certification cycle.	The Commission disagrees. The subsections say an interpreter is required to obtain the continuing education required to maintain the interpreter's certification. Certifications required for a Class A legal license include legal training as part of the continuing education required to maintain certification. Each certification may have a different certification cycle—the Commission does not issue the certifications and has no authority over the CE required by or certification cycles used by the certifying entities.	No change
R9-26-510(A)(2): The amount of CE required depends on the legal	A currently licensed Legal A interpreter is required to obtain the	No change

interpreter's certification. What about the Legal Class A interpreters who do not yet have a legal certificate? What amount of CE is required?	CE required to maintain the certification held.	
R9-26-510(A)(4): Require provisional licensees to submit proof of CE annually.	That's exactly what the subsection requires.	No change
R9-26-510(A)(4): Require provisional licensees to obtain 15 hours of CE annually instead of 12.	It is in the interest of a provisional licensee to study and gain experience so the licensee can become certified and obtain a General license. However, the Commission believes it is not necessary to impose this study in these rules. The required 12 hours of CE protects the public.	No change

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 described in R9-26-503 through R9-26-507 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

The Americans with Disabilities Act applies to individuals who are deaf or hard of hearing. However, no federal law is directly applicable to the subject of any rule in 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 9. HEALTH SERVICES

CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

ARTICLE 1. ~~GENERAL~~ REPEALED

Section

R9-26-101. ~~Definitions~~ Renumbered

ARTICLE 2. TELECOMMUNICATIONS EQUIPMENT DISTRIBUTION PROGRAM

Section

~~R9-26-101.~~	R9-26-201.	Definitions
~~R9-26-201.~~	R9-26-202.	Eligibility
~~R9-26-202.~~	R9-26-203.	Application Process
~~R9-26-203.~~	R9-26-204.	Persons Authorized to Certify Need for Telecommunications Equipment
~~R9-26-204.~~	R9-26-205.	Vouchers
~~R9-26-205.~~	R9-26-206.	Redeeming a Voucher
~~R9-26-206.~~	R9-26-207.	~~Repealed~~ Confidentiality

ARTICLE 3. ADMINISTRATIVE PROCEDURES

Section

R9-26-301. ~~Hearings~~ Repealed

~~R9-26-512.~~ R9-26-301. Making a Complaint

R9-26-302. ~~Informal Settlement Conference~~ Repealed

~~R9-26-515.~~ R9-26-302. Hearing Procedures

R9-26-303. ~~Rehearing or Review of Decision~~ Repealed

~~R9-26-516.~~ R9-26-303. Rehearing or Review of Commission Decision

~~R9-26-517.~~ R9-26-304. ~~Renumbered~~ Disciplinary Action

ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

Section

R9-26-501. Definitions

R9-26-502. License Application

R9-26-503. Application for Generalist Interpreter License

R9-26-504. Application for Legal Interpreter License

R9-26-505. Application for Provisional Interpreter License

R9-26-506. Short-term Registration of an Interpreter

R9-26-507. License Renewal

R9-26-508. Fees and Charges

R9-26-509. Procedures for Processing Applications; ~~Time-frames~~ Time Frames

R9-26-510. Continuing Education Requirement; Waiver; Extension of Time to Complete

R9-26-511. ~~Audit of Compliance with Continuing Education Requirement~~ Video Remote Interpreting

R9-26-512. Making a Complaint

R9-26-515. ~~Hearing Procedures~~ Identification Badge Required

R9-26-516. ~~Rehearing or Review of Commission Decision~~ Renumbered

R9-26-517. ~~Disciplinary Action~~ Renumbered

R9-26-518. ~~Change of Name or Address~~ Required Notices to the Commission

ARTICLE 1. ~~GENERAL~~ REPEALED

R9-26-101. ~~Definitions~~ Renumbered

ARTICLE 2. TELECOMMUNICATIONS EQUIPMENT DISTRIBUTION PROGRAM

~~R9-26-101.~~ R9-26-201. Definitions

In addition to the definitions listed in A.R.S. § 36-1941, the following terms apply to this ~~Chapter~~ Article and ~~to~~ A.R.S. § 36-1947:

"Applicant" means a person who applies to the Commission for telecommunications equipment.

"Audiologist" means a person who is licensed under A.R.S. § 36-1940 by the Arizona Department of Health Services.

~~"Commission" means the Arizona Commission for the Deaf and Hard of Hearing.~~

"Deafblind" means a person who is either deaf or hard of hearing and:

Has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or

Has a field defect where the peripheral diameter of the visual field subtends an angular distance no greater than 20 degrees, or

Has a progressive visual loss with a prognosis of one or both of the conditions stated in the two preceding subsections.

"Director" means the Executive Director of the Arizona Commission for the Deaf and Hard of Hearing.

"Hearing aid dispenser" has the same meaning as in A.R.S. § 36-1901~~(8)~~.

"Hearing or speech-related disability" means a disability that prevents a person from hearing or articulating speech audibly or clearly, including deafness.

"Program" means the Telecommunications Equipment Distribution Program.

"Recipient" means a person who receives telecommunications equipment through the Program.

~~"Relay operator" means a person hired by a telecommunication relay center to transmit a conversation between a person who is hearing or speech-related disabled and another person who uses a standard telephone.~~

"Severely hearing or speech impaired" under A.R.S. § 36-1947(A) means a hearing or speech-related disability.

"Supplier" means a person that sells telecommunications equipment.

"Telecommunications equipment" means equipment that allows a person with a hearing or speech-related disability to access the telephone network.

~~"Telecommunication relay center" means a facility authorized by the Commission to provide telecommunication services through a third party to a person with a hearing or speech-related disability, and to any other person who uses a standard telephone.~~

~~"Vendor" means a person who sells telecommunications equipment.~~

"Vocational rehabilitation counselor" means a Department of Economic Security employee who has a Master's degree in rehabilitation counseling from a university accredited by the National Council on Rehabilitation Education and who is certified by the Commission on Rehabilitation Counseling.

"Voucher" means the Commission's authorization of payment for telecommunications equipment.

~~R9-26-201.~~ R9-26-202. Eligibility

To be eligible for telecommunications equipment through the Program, a person shall:

1. No change
2. Be a citizen of the U.S. or an alien whose presence in the U.S. is authorized under federal law;

~~2.~~3. No change

~~3.~~4. Have access to a telephone line ~~in the person's place of residence~~;

~~4.~~5. Not have used a voucher to purchase telecommunications equipment within five years before the date of application under ~~R9-26-202(A)(1)~~ R9-26-203 unless the individual's disability status has changed during that time; and,

~~5.~~6. No change

~~R9-26-202.~~ R9-26-203. Application Process

To apply for telecommunications equipment under the Program, an eligible person shall:

1. No change
2. Complete and return the application to the Commission with:
   a. ~~certification~~ Certification from an authorized person described under A.A.C. ~~R9-26-203~~ R9-26-204 that the applicant has a hearing or speech-related disability and needs the telecommunication equipment requested on the application; and
   b. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law.

~~R9-26-203.~~ R9-26-204. Persons Authorized to Certify Need for Telecommunications Equipment

A. No change

1. No change
2. No change

3. A physician licensed in accordance with A.R.S. Title 32, Chapter 13 or 17;
4. No change
5. No change
6. No change
7. No change
8. No change

B. No change

1. No change
2. No change
3. No change

~~R9-26-204.~~ R9-24-205. Vouchers

A. The Commission shall issue to an eligible applicant an individually numbered voucher for a specified dollar amount for the applicant to purchase telecommunications equipment for which the applicant has a certified need. The applicant shall use the voucher ~~shall be used~~ only ~~towards the~~ to purchase ~~of~~ the telecommunications equipment specified on the voucher.

B. No change

C. No change

D. No change

1. No change
2. If the original voucher is recovered, the applicant shall return the original voucher ~~shall be returned~~ to the Commission within 30 days ~~of its recovery date~~ after the voucher is recovered.

~~R9-26-205.~~ R9-26-206. Redeeming a Voucher

A. To redeem a voucher for telecommunications equipment under ~~this~~ the Program, a ~~vendor~~ supplier shall submit to the Commission the voucher with a copy of a receipt, which is signed by the ~~vendor~~ supplier and the recipient of the telecommunications equipment and which specifies the telecommunications equipment sold and its purchase price.

B. No change

C. The Commission shall reimburse to the ~~vendor~~ supplier the portion of the purchase price of the telecommunications equipment that does not exceed the amount printed on the voucher.

D. The Commission shall not reimburse to the ~~vendor~~ supplier an amount in excess of the amount printed on the voucher.

E. If the amount printed on the voucher exceeds the purchase price of the telecommunications equipment, the ~~vendor~~ supplier shall not refund the difference between the two amounts to the recipient of the telecommunications equipment in any form including money, equipment, or other goods and services.

~~R9-26-206.~~ R9-26-207. ~~Repealed~~ Confidentiality

A. The Commission shall use the information provided by the Program's applicants or recipients in the course of the administration of the Program solely to administer the Program.

B. The Commission shall not disclose the name of an applicant for or recipient of telecommunications equipment without a written request for disclosure. Even with a written request for disclosure, the Commission shall not disclose personal identifying or protected health information regarding an applicant or recipient.

ARTICLE 3. ADMINISTRATIVE PROCEDURES

~~R9-26-301. Hearings~~

~~**A.** Within 30 days of a notice of denial from the Director, the applicant or recipient may file a notice of appeal under A.R.S. § 41-1092.03 with the Commission. The notice shall identify the party, the party's address, the agency, the action being appealed, and shall contain a concise statement of the reasons for the hearing.~~

~~**B.** The hearing shall be conducted by the Office of Administrative Hearings as prescribed in A.R.S. Title 41, Chapter 6, Article 10.~~

~~R9-26-512.~~ R9-26-301. Making a Complaint

A. No change

1. No change
2. No change
3. No change

B. No change

1. No change
2. No change
3. Specify in the complaint the name of the individual complained against, date and location of the alleged offense, and the action complained about~~, and the statute or rule alleged to have been violated~~.

C. No change

~~**R9-26-302.**~~ ~~**Informal Settlement Conference**~~

~~**A.** An applicant or recipient whose request for an original or replacement device is denied and who has filed an appeal under A.R.S. § 41-1092.03, may request in writing that the Director hold an informal settlement conference.~~

~~**B.** The informal settlement conference shall be held within 15 days after receiving the request and shall follow the procedures under A.R.S. § 41-1092.06.~~

~~**R9-26-515.**~~ **R9-26-302.** **Hearing Procedures**

The Commission shall conduct all hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

~~**R9-26-303.**~~ ~~**Rehearing or Review of Decision**~~ **Repealed**

~~**A.** Any party to a case who is aggrieved by a decision rendered in the case may, within 30 days after the date of the Commission's decision, file with the Director a written request for a rehearing or review of the decision. The request shall specify the particular grounds for the rehearing or review. The requesting party shall serve copies upon all other parties. A request for rehearing or review under this Section may be amended at any time before it is ruled upon by the Director.~~

~~**B.** The opposing party may file a response to the request for a rehearing or review within 15 days after the written request is received.~~

~~**C.** A rehearing or review of the decision may be granted for any of the following causes which materially affect the requesting party's rights:~~

~~1. Irregularity in the proceedings or any abuse of discretion that deprives the requesting party of a fair hearing;~~

~~2. Misconduct of the hearing officer or the prevailing party;~~

~~3. Accident or surprise that could not have been prevented by ordinary prudence;~~

~~4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;~~

~~5. Excessive or insufficient penalties;~~

~~6. Error in the admission or rejection of evidence or other errors of law occurring during the proceedings;~~

~~7. That the decision is the result of passion or prejudice; or~~

~~8. That the decision is not supported by the evidence or is contrary to law.~~

~~**D.** Upon examination of a request for rehearing or review and any response, the Director may affirm or modify the decision.~~

~~**E.** Within 15 days after a decision is rendered, the Director may, on the Director's own initiative, order a rehearing or review of a decision for any reason for which a rehearing on motion of a party might have been granted. The order granting the rehearing shall specify the grounds for the review of the decision.~~

~~R9-26-516.~~ R9-26-303. Rehearing or Review of Commission Decision

A. The Commission shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

B. A party may amend a motion for rehearing or review at any time before the Commission rules on the motion.

C. The Commission may grant a rehearing or review for any of the following reasons materially affecting a party's rights:

1. Irregularity in the proceedings or an order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct by the Commission, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the 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. The Commission's decision is the result of passion or prejudice; or
8. The findings of fact or decision is not justified by the evidence or is contrary to law.

D. The Commission may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). The Commission shall specify the particular grounds for any order modifying a decision or granting a rehearing.

E. When a motion for rehearing or review is based ~~upon~~ on affidavits, ~~they~~ the affidavits shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.

F. No later than ~~10~~ 15 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Commission may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Commission may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

G. If a rehearing is granted, the Commission shall hold the rehearing within 60 days after the date on the order granting the rehearing.

~~**H.** The Commission may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that an extension of time will:~~

~~1. Further administrative convenience, expedition, or economy; or~~

~~2. Avoid undue prejudice to any party.~~

H. If the Commission makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Commission shall issue the decision as a final decision without an opportunity for rehearing or review.

~~R9-26-517.~~ R9-26-304. Disciplinary Action

After ~~a~~ an opportunity for hearing ~~that results in a~~ and a Commission determination that a licensee violated A.R.S. Title 36, Chapter 17.1, or this Chapter, the Commission shall consider the following factors to determine the degree of discipline to impose under A.R.S. § 36-1976(A):

1. Prior conduct resulting in discipline;
2. Dishonest or self-serving motive;
3. Amount of experience as an interpreter;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Commission;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct;
7. Degree of harm resulting from the conduct; and
8. Whether harm resulting from the conduct was cured.

ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

R9-26-501. Definitions

In addition to the definitions in A.R.S. §§ 12-242 and 36-1941, in this Article, the following definitions apply unless otherwise specified:

"ACCI" means American Consortium of Certified Interpreters, an organization that certifies interpreters at one of three levels: ACCI Generalist, ACCI Advanced, or ACCI Master.

"Accredited" means approved by a regional or national accrediting agency recognized by the U. S. Department of Education. ~~the:~~

~~New England Association of Schools and Colleges,~~

~~Middle States Association of Colleges and Secondary Schools,~~

~~North Central Association of Colleges and Schools,~~

~~Northwest Association of Schools and Colleges,~~

~~Southern Association of Colleges and Schools, or~~

~~Western Association of Schools and Colleges.~~

"Applicant" means an individual seeking an original or renewal license from the Commission.

"Application" means the documents, forms, and additional information required by the Commission to be submitted by or on behalf of an applicant.

"BEI" means Board for Evaluation of Interpreters.

"CDI" means certified deaf interpreter, a certification issued by RID or BEI.

"CI" means certificate of interpretation, a certification issued by RID.

"CIC" means Court Interpreter Certification, a legal specialist certification issued by BEI.

"CLIP-R" means conditional legal interpreting permit--relay, a certification issued by RID to a deaf or hard-of-hearing interpreter or transliterator who works in a legal setting.

"Continuing education" means a workshop, seminar, lecture, conference, class, or other educational activity relevant to the practice of interpreting.

"CSC" means comprehensive skills certificate, a certification issued by RID.

"CT" means certificate of transliteration, a certification issued by RID.

~~"Direct supervision" means an individual licensed under R9-26-503 or R9-26-504 is physically present when an individual licensed under R9-26-505 provides interpreting services.~~

"Deaf interpreter" means an individual who is deaf or hard of hearing and provides interpreting for deaf individuals with special language needs.

"EIPA" means educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

"Generalist interpreter" means an individual who provides interpreting in any community setting, except a legal setting, for which the individual is qualified by education, examination, and work history. A generalist interpreter provides interpreting in a legal setting only if appointed by a judge under A.R.S. § 12-242.

~~"IAC" means interpreter advisory committee.~~

"IC" means interpretation certificate, a certification issued by RID.

"Intermediary Level III or V" means a certification issued by BEI for interpreters who are deaf or hard of hearing.

"Interpreter" means an individual who provides interpreting between American Sign Language and English.

"Legal interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting in a legal setting.

"Class A legal interpreter" means a legal interpreter who provides interpreting in court~~, a police environment, or administrative adjudicatory~~ proceedings or any other legal setting, as prescribed under A.R.S. § 12-242, and meets the certification requirement under R9-26-504(A)(1)(a). An

individual who is licensed by the Commission as a Class A legal interpreter on the date this Section takes effect, shall meet the certification requirement under R9-26-504(A)(1)(a) no later than January 1, 2021.

~~"Class B legal interpreter" means a legal interpreter who provides interpreting in administrative adjudicatory proceedings only.~~

"Class C legal interpreter" means a legal interpreter who provides interpreting in a legal setting, as prescribed under A.R.S. § 12-242, when teamed with a Class A ~~or Class B~~ legal interpreter and meets the certification requirement under R9-26-504(A)(1)(b).

"Class D legal interpreter" means a legal interpreter who meets the certification requirement under R9-26-504(A)(1)(c) and is ~~also~~ either a deaf or hard-of-hearing interpreter or an oral transliterator.

"Legal training" means a structured program presented by the Commission, a court, Bar Association, law-enforcement association, RID, accredited institution, or comparable organization, providing information relevant to legal interpreting such as the following:

The requirements of A.R.S. § 12-242,

The structure of the judiciary system of this state,

The judiciary process of this state,

Administrative adjudicatory procedures,

Law enforcement procedures ~~related to interpreting~~, or

Commonly used legal terms.

"Level III, IV, or V" means a certification issued by BEI.

"Licensee" means an interpreter who holds a current license issued under A.R.S. § 36-1974 and this Article.

"License year" means the days between the date of license issuance and the date of license expiration.

"Mentor" means an individual licensed under R9-26-503 or R9-26-504 who agrees to assist a provisional licensee to develop as an interpreter by occasionally observing the provisional licensee providing interpreting services and providing feedback.

"MCSC" means master comprehensive skills certificate, a certification issued by RID.

"NAD" means the National Association of the Deaf~~, which issues three levels of certification: NAD III (generalist), NAD IV (advanced), and NAD V (master)~~.

"NAD III (generalist)," means a certification issued by NAD.

"NAD IV (advanced)," means a certification issued by NAD.

"NAD V (master)," means a certification issued by NAD.

"NIC" means National Interpreter Certification~~, a certification issued by NAD-RID at one of three levels, NIC Certified, NIC Advanced, or NIC Master~~.

"NIC Advanced" means a certification issued by NAD-RID.

"NIC Certified" means a certification issued by NAD-RID.

"NIC Master" means a certification issued by NAD-RID.

"OC:B" means oral certificate: basic, a certification issued by BEI.

"OC:C" means oral certificate: comprehensive, a certification issued by BEI.

"OIC" means oral interpreting certificate, a certification issued by RID in one of three categories: comprehensive, spoken to visible, or visible to spoken.

"Oral transliteration" means to facilitate communication between an individual who is deaf or hard of hearing and an individual who hears by using inaudible speech and natural gestures to convey a message to the deaf or hard-of-hearing individual and understanding and verbalizing the message and intent of the speech and mouth movements of the individual who is deaf or hard of hearing.

"OTC" means oral transliteration certificate, a certification issued by RID.

"Platform or performance setting" means an environment involving an appearance by a designated speaker or performers, typically on a raised surface.

"Provisional interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting while pursuing RID, NAD, or BEI certification.

"Class A provisional interpreter" means a provisional interpreter who provides oral transliteration and ~~does not have an OTC~~ is working towards certification by RID, NAD, or BEI. A Class A provisional interpreter shall not provide interpreting services in a legal setting.

"Class B provisional interpreter" means a provisional interpreter who ~~was paid for interpreting services before the effective date of this Article and~~ is qualified to provide interpreting services ~~when working with a mentor or when teamed with an individual~~ without a team interpreter licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) and (b), except in a medical, mental health, platform or performance , or legal setting. A Class B provisional interpreter may provide interpreting services in a medical, mental health, or platform or performance setting only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class B provisional interpreter shall not provide interpreting services in a legal setting.

"Class C provisional interpreter" means a provisional interpreter who is qualified to provide interpreting services only ~~under direct supervision~~ when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b). A Class C provisional interpreter shall not provide interpreting services in a legal setting.

"Class D provisional interpreter" means a provisional interpreter who is deaf or hard of hearing and ~~does not have a CDI~~ is qualified to provide interpreting services only when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or (b) or R9-26-504(A)(1)(a) through (c). A Class D provisional interpreter shall not provide interpreting services in a legal setting.

"Qualified interpreter" means an individual licensed under this Chapter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary required by the interpreting situation.

"RID" means Registry of Interpreters for the Deaf.

"RSC" means reverse skills certificate, a certification issued by RID.

"SC:L" means specialist certificate: legal, a certification issued by RID.

"SC:PA" means specialist certificate: performing arts, a certification issued by RID.

"TC" means transliteration certificate, a certification issued by RID.

"Team" means two or more licensed interpreters, at least one of whom is licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), providing interpreting for an individual or group of individuals during a single interpreting session.

"Trilingual Advanced or Master" means a specialist certification issued by BEI for interpreters of Spanish, English, and American Sign Language.

"Unprofessional conduct," as used in A.R.S. § 36-1976, means:

~~violation~~ Violation of the NAD-RID Code of Professional Conduct, 2005, which is incorporated by reference and available from the Commission and RID, 333 Commerce Street, Alexandria, VA 22314, or www.rid.org. The material incorporated includes no later edition or amendment~~.~~ ; or

Failure to comply with a provision of A.R.S. Title 36, Chapter 17.1, Article 2 or this Chapter.

"VRI" means video remote interpreting, a service that uses video telecommunication devices to provide interpreting between or among individuals who are at one or more locations separate from the interpreter.

R9-26-502. License Application

A. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. The start and end dates of the applicant's current certification cycle with RID, NAD, or BEI, as applicable;

~~8.~~9. No change

~~9.~~10. Name of any state or foreign country in which the applicant is ~~or has been~~ currently licensed or certified to practice as an interpreter, the license or certificate number, date issued, date ~~expired~~ of

expiration, and a statement whether the license or certificate is or ~~has ever been~~ was the subject of discipline and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;

~~10.~~11. No change

~~11.~~12. No change

~~12.~~13. No change

~~13.~~14. ~~A statement of whether the applicant wishes to have the applicant's professional credentials and contact information listed on the Commission's web site and in Commission materials; and~~ A statement of whether the applicant's NAD, RID, or BEI certification lapsed and if so, a complete explanation including date of and reason for the lapse;

15. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction lapsed and if so, a complete explanation including date of and reason for the lapse;

16. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction was subject to a complaint and if so, a complete explanation including date, allegation, and discipline imposed, if any;

17. A statement of whether the applicant's NAD, RID, or BEI certification was subject to a complaint and if so, a complete explanation including date, allegation, and discipline imposed, if any; and

~~14.~~ 18. A statement signed by the applicant verifying the truthfulness of the information provided and affirming that the applicant will comply with the NAD-RID Code of Professional Conduct~~.~~;

B. No change

1. Documentation of name change if the applicant is applying under a name different from the name on any of the documents required under this Article;
2. No change
   a. High school diploma or GED or a transcript, official or unofficial, showing the degree awarded and date~~,~~ ; or
   b. Diploma from an accredited college or university or a transcript, official or unofficial, showing the degree awarded and date;
3. If the answer to ~~subsection~~ any item in subsections (A)(9)~~, (A)(10), (A)(11), or (A)(12)~~ through (A)(15) is yes, a copy of any relevant order; ~~and~~
4. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law;
5. Two identical passport-size photographs of the applicant that:
   a. Are in color, and
   b. Are taken no more than six months before the date of application; and

~~4.~~6. No change

R9-26-503. Application for Generalist Interpreter License

To apply for a generalist interpreter license, an applicant shall:

1. No change
2. Submit a photocopy of ~~the front of the applicant's~~ current ~~RID membership card~~ documentation showing that the applicant holds one or more of the following certifications:
   a. Hearing interpreters: NAD III, IV, or V; RID CI, CSC, CT, IC, MCSC, RSC, SC:L, SC:PA, or TC; NIC Certified, Advanced, or Master; or BEI Levels III, IV, or V, Basic, Advanced, Master, Trilingual Advanced, Trilingual Master, CIC, or other certification deemed appropriate by the Commission;
   b. Deaf interpreters: RID CDI, ~~CI,~~ CLIP-R, ~~CSC, CT, IC, MCSC, OIC, OTC, RSC,~~ or SC:L~~, SC:PA, or TC~~; BEI Intermediary Level III or V, CDI, or other certification deemed appropriate by the Commission; or
   c. ~~NIC Certified, Advanced, or Master.~~ Oral interpreters: RID OIC or OTC, BEI OC:B or OC:C, or other certification deemed appropriate by the Commission.

R9-26-504. Application for Legal Interpreter License

A. To apply for a legal interpreter license, an applicant shall comply with R9-26-502 and submit documentation of the following:

1. Certification by RID, ~~or~~ NAD, or BEI.
   a. For a Class A legal interpreter license, RID SC:L, ~~NIC Advanced or Master, NAD IV or V, CI and CT, or CSC~~ BEI CIC, or other legal specialist certification deemed appropriate by the Commission is required;
   b. ~~For a Class B legal interpreter license, NIC Certified, Advanced, or Master, NAD III, IV, or V, CI, CT, or CSC is required;~~
   ~~c.~~ For a Class C legal interpreter license, NIC Certified, Advanced, or Master, NAD III, IV, or V, CI, CT, or CSC, or BEI Levels IV or V, Advanced, Master, Trilingual Advanced or Master, or other certification deemed appropriate by the Commission is required; and
   ~~d.~~c. For a Class D legal interpreter license, RID CDI, CLIP-R, OIC, or OTC or BEI OC:B, OC:C, Intermediary Levels III or V, or CDI, or other certification deemed appropriate by the Commission is required;
2. Hours of paid interpreting after initial certification by RID, ~~or~~ NAD, or BEI.
   a. For a ~~Class A, Class B, or~~ Class C legal interpreter license, 10,000 hours are required; and
   b. For a Class D legal interpreter license, ~~25~~ 500 hours are required;
3. Hours of legal training. ~~Twenty-four hours in~~ For a Class C or Class D legal interpreter, 50 hours obtained during the five years before the date of application are required.

B. No change

1. RID, ~~or~~ NAD, or BEI certification.
   a. A photocopy of ~~the front of the~~ current ~~membership card~~ documentation provided by RID, ~~or~~ NAD, or BEI. If an applicant's documentation expires during the application process, the Commission shall not complete the licensure process until the applicant submits current documentation of certification; and
   b. A photocopy of the certificate provided by RID, ~~or~~ NAD, or BEI or a copy of the letter received from RID, ~~or~~ NAD, or BEI at the time of initial certification;
2. No change
   a. An applicant shall submit an affidavit affirming that the applicant provided the number of hours of paid interpreting required under subsection (A)(2) after initial certification by RID, ~~or~~ NAD, or BEI; and
   b. No change
3. Hours of legal training. A photocopy of ~~a certificate of attendance~~ documentation from the organization providing the legal training that includes the information required under R9-26-510~~(C)~~ (B).

R9-26-505. Application for Provisional Interpreter License

A. No change

1. Education. The following hours of participation in an interpreter-preparation training program offered by an accredited college or university or approved by RID, NAD, or BEI:
   a. No change
   b. No change
2. Examination. Pass the written portion of the ~~NIC or~~ RID, NAD, or BEI examination; and
3. No change
   a. No change
   b. No change
      ~~i. 150 hours for which the applicant received pay before May 1 2007;~~
      ~~ii.~~i. A score of at least 4.0 on the EIPA performance test; ~~or~~
      ~~iii.~~ii. ACCI certification; or
      iii. A state-issued certification or certificate of competency in good standing;
   c. No change
   d. No change

B. In addition to the documentation required under subsection (A)~~:~~,

~~1. An applicant for a provisional interpreter license shall ensure that letters of recommendation are submitted directly to the Commission by two individuals who are familiar with the applicant's skill as an~~

~~interpreter. An individual who submits a letter of recommendation shall use a form that is available from the Commission and provide the following information:~~

~~a. Name of the applicant for a provisional interpreter license;~~

~~b. The following information about the individual completing the letter of recommendation form:~~

~~i. Name;~~

~~ii. Telephone number;~~

~~iii. Interpreter license number, if any;~~

~~iv. How long the individual has known the applicant;~~

~~v. The capacity in which the individual knows the applicant; and~~

~~vi. Why the individual believes the individual is qualified to assess the applicant's skill as an interpreter;~~

~~c. An assessment of the applicant's receptive, expressive, and voicing skills; and~~

~~d. The individual's dated signature.~~

~~2. An~~ an applicant for a Class B provisional license shall:

~~a.~~1. Have a letter submitted directly to the Commission by an individual licensed under R9-26-503 or R9-26-504 indicating that the individual agrees to:

~~i.~~a. Act as a mentor to the applicant if the applicant is granted a provisional license;

~~ii.~~b. Observe the provisional licensee providing interpreting services at least once each month;

~~iii.~~c. Provide feedback to the provisional licensee following each observation; and

~~iv.~~d. Provide ~~30-days~~ 30 days' notice to the provisional licensee and the Commission before terminating the mentoring relationship; and

~~b.~~2. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:

~~i.~~a. Make and maintain a record of each time the mentor observes the applicant and a summary of the feedback provided; ~~and~~

~~ii.~~b. Make the record maintained under subsection ~~(B)(2)(b)(i)~~ (B)(2)(a) available to the Commission ~~upon request~~ annually at license renewal; ~~or~~ and

c. Provide 30 days' notice to the Commission and the mentor before terminating the mentoring relationship; or

~~c.~~3. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:

~~i.~~a. Team with an individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b) for ~~an average of~~ at least eight hours each month;

~~ii.~~b. Maintain a journal that records the dates on which and the name of the licensee with whom teaming was done and a summary of any feedback provided; and

~~iii.~~c. Make the journal maintained under subsection ~~(B)(2)(c)(ii)~~ (B)(3)(b) available to the Commission annually upon ~~request~~ license renewal.

C. No change

1. Education. A photocopy of ~~certificates of completion~~ documents showing that the applicant completed the hours ~~of interpreter preparation training~~ required under subsection (A)(1);
2. Examination. A photocopy of the letter provided by ~~NIC or~~ RID, NAD, or BEI indicating that the applicant passed the written portion of ~~either~~ the ~~NIC or~~ RID, NAD, or BEI examination;
3. No change
   a. No change
      i. No change
      ii. No change
      iii. The hours of interpreting provided by the applicant; ~~and~~ or
   b. One or more paystubs, each of which indicates:
      i. The name of the applicant,
      ii. The job title of the applicant,
      iii. The dates on which interpreting was provided by the applicant, and
      iv. The hours of interpreting provided by the applicant, and
   ~~b.~~c. No change
      i. No change
      ii. A photocopy of the applicant's ACCI certificate~~.~~ , or
      iii. A photocopy of the applicant's state-issued certification or certificate of competency in good standing.

R9-26-506. Short-term Registration of an Interpreter

A. To register with the Commission to provide interpreting in Arizona in a non-legal situation for fewer than 20 days in a year, an interpreter shall submit the following information in writing to the Commission:

1. Interpreter's name;
2. Interpreter's ~~business~~ residential and e-mail addresses;
3. Interpreter's ~~business and~~ mobile telephone ~~numbers~~ number;
4. Dates on which interpreting will be provided; ~~and~~
5. Name, address, and contact information of the person or event for which interpreting services will be provided; and

~~5.~~6. Date of most recent short-term registration with the Commission, if any.

B. In addition to complying with subsection (A), the interpreter shall submit a copy of ~~the interpreter's~~ current documentation from RID, NAD, or BEI ~~membership card or license from a government licensing authority~~

showing the interpreter's certification is in good standing or a copy of the interpreter's license from another state's interpreter licensing authority.

C. An interpreter who makes application under subsections (A) and (B) for a short-term registration shall not provide interpreting services in Arizona until the Commission provides notice the registration has been granted.

D. Within five days after providing interpreting services under a short-term registration, the interpreter shall submit a report to the Commission that provides the dates on and persons or events for which interpreting services were provided.

E. The Commission shall not issue more than two short-term registrations to an interpreter during the interpreter's lifetime.

R9-26-507. License Renewal

A. No change

1. A generalist or legal interpreter license expires ~~on the licensee's birthday beginning with the licensee's second birthday following initial licensure~~ one year after the license is issued. To continue to practice as a generalist or legal interpreter, the licensee shall, no more than 60 days before the ~~licensee's birthday~~ expiration date, submit to the Commission a license renewal application form that provides the following information about the licensee:

   a. No change

   b. No change

   ~~c. Arizona interpreter license number;~~

   ~~d.~~c. Home or business address;

   ~~e.~~d. E-mail address;

   ~~f.~~e. Home, business, or mobile telephone number;

   ~~g. If applicable, the name of the licensee's employer and the employer's address and telephone number;~~

   f. The start and end dates of the applicant's current certification cycle with RID, NAD, or BEI, as applicable;

   ~~h.~~g. Name of any state or country in which the licensee is ~~or has been~~ currently licensed or certified to practice as an interpreter, the license or certificate number, date issued and date of expiration, and a statement whether the license or certificate is or has been the subject of discipline ~~since the date of last application~~ during the previous year and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;

   ~~i.~~h. A statement of whether the licensee has been denied a license or certificate to practice as an interpreter by a ~~government~~ licensing authority ~~since the date of last application~~ during the previous

year and if the answer is yes, a complete explanation of the denial including date, name of the ~~government~~ interpreter licensing authority, and reason for denial;

~~j.~~i. A statement of whether the licensee has been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction ~~since the date of last application~~ during the previous year and if the answer is yes, a complete explanation of the charge and place and date of conviction;

~~k.~~j. A statement of whether the licensee has been adjudicated insane or incompetent ~~since the date of last application~~ during the previous year and if the answer is yes, a complete explanation including date and place of adjudication;

~~l. A statement of whether the licensee wishes to have the licensee's professional credentials and contact information listed on the Commission's web site and in Commission materials; and~~

~~m. A statement signed by the licensee attesting to the truthfulness of the information provided and affirming that the licensee will comply with the NAD-RID Code of Professional Conduct.~~

k. A statement of whether the applicant's NAD, RID, or BEI certification lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;

l. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction lapsed during the previous year and if so, a complete explanation including date of and reason for the lapse;

m. A statement of whether the applicant's interpreter license from Arizona or another jurisdiction was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any;

n. A statement of whether the applicant's NAD, RID, or BEI certification was subject to a complaint during the previous year and if so, a complete explanation including date, allegation, and discipline imposed, if any, and if discipline was imposed, a statement of whether the notice required under R9-26-518 was submitted to the Commission;

o. A statement of whether the applicant completed any continuing education during the previous year and if so, the number of hours completed; and

p. A statement signed by the licensee verifying the truthfulness of the information provided and affirming that the licensee will comply with the NAD-RID Code of Professional Conduct.

2. No change

a. A photocopy of ~~the front of the licensee's~~ current ~~RID membership card~~ documentation showing the applicant's NAD, RID, or BEI certification is in good standing. If the licensee's documentation expires during the renewal process, the Commission shall not complete the license renewal process until the licensee submits a photocopy of current documentation;

b. If the answer to ~~the~~ any item in ~~subsection (A)(1)(i), (A)(1)(j), or (A)(1)(k)~~ subsections (A)(1)(g) through (A)(1)(m) is yes, a copy of any relevant order; and

c. ~~An affirmation of compliance with the continuing education requirement in R9-26-510 or, if subject to an audit under R9-26-511, documentation that demonstrates compliance with the continuing education requirement; and~~

~~d.~~ No change

3. If a generalist or legal licensee fails to comply with subsections (A)(1) and (A)(2) on or before the ~~licensee's birthday~~ license expiration date, the license expires ~~and the former licensee shall cease providing interpreting for which a license is required under A.R.S. § 36-1971~~. The former licensee may renew the expired license by complying with subsections (A)(1) and (A)(2), ~~affirming that the former licensee did not provide interpreting for which a license is required under A.R.S. § 36-1971 after the license expired,~~ and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.

4. No change

B. No change

1. A provisional interpreter license expires ~~on the licensee's birthday beginning with the second birthday following initial licensure and may be renewed once by complying with subsections (B)(2) and (B)(3)~~ one year after the date of issuance.

2. To continue to practice as a provisional interpreter, the licensee shall, no more than 60 days before the ~~licensee's birthday~~ expiration date, submit to the Commission a license renewal application form that provides the information specified under subsection (A)(1).

3. No change

a. If the answer to ~~the~~ any item in ~~subsection (A)(1)(i), (A)(1)(j), or (A)(1)(k)~~ subsections (A)(1)(h) through (A)(1)(m) is yes, a copy of any relevant order;

b. ~~An affirmation of compliance with the continuing education requirement in R9-26-510 or, if subject to an audit under R9-26-511, documentation~~ Documentation required under R9-26-510(C) that demonstrates compliance with the continuing education requirement in R9-26-510; and

c. No change

d. If a Class B provisional licensee wishes to renew the Class B provisional license, letters that meet the standards at ~~R9-26-505(B)(2)(a)~~ R9-26-505(B)(1) and ~~R9-26-505(B)(2)(b)~~ (2) or a letter that meets the standards at ~~R9-26-505(B)(2)(c)~~ R9-26-505(B)(3); and

e. If a Class C provisional licensee wishes to renew the Class C provisional license, an affirmation that the licensee has provided and will continue to provide interpreting services only ~~under direct supervision~~ when working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b); or

f. If a Class C provisional licensee wishes to move to a Class B provisional license:

i. Letters that meet the standards at R9-26-505(B)(1) and (2) or a letter that meets the standards at R9-26-505(B)(3), and

ii. Evidence required under R9-26-505(C)(3)(a) or (b) showing at least 500 hours of work experience earned while working as part of a team that includes at least one individual licensed under R9-26-503(2)(a) or R9-26-504(A)(1)(a) or (b), or

iii. A score of at least 4.0 on the EIPA performance test.

4. If a provisional licensee fails to comply with subsections (B)(2) and ~~(B)~~(3) on or before the ~~licensee's birthday~~ license expiration date, the license expires ~~and the former licensee shall cease providing interpreting for which a license is required under A.R.S. § 36-1971~~. Unless the expired provisional license has previously been renewed under subsections (B)(2) and ~~(B)~~(3), the former licensee may renew the expired license by complying with subsections (B)(2) and ~~(B)~~(3)~~, affirming that the former licensee did not provide interpreting for which a license is required under A.R.S. § 36-1971 after the license expired,~~ and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired. If a former licensee fails to renew an expired license within the 30 days provided in this subsection, the former licensee shall stop providing interpreting for which a license is required under A.R.S. § 36-1971.

5. ~~If an expired provisional license is not renewed under subsection (B)(4), the former licensee may obtain a license only by applying under R9-26-503 or R9-26-504.~~ The Commission shall not issue a provisional interpreter license to an interpreter for more than five years over the interpreter's lifetime.

~~6. A provisional interpreter license may be renewed a second time only if, in addition to complying with subsections (B)(2) and (B)(3), the licensee submits evidence to the Commission that the licensee attempted to pass the performance portion of a RID certification examination and intends to take the performance portion of a RID certification examination again within the next year.~~

~~7. The Commission shall not renew a provisional license more than two times. The Commission shall not issue more than one provisional license to an individual.~~

C. If the documentation previously submitted under R9-26-502(B)(4) was a limited form of work authorization issued by the federal government, an applicant for license renewal shall submit evidence that the work authorization has not expired.

D. The Commission shall require a licensee to submit the information required under R9-26-502(B)(5) every five years so an updated photograph is used in the identification badge required under R9-26-515.

R9-26-508. Fees and Charges

A. Under the authority provided by A.R.S. §§ 36-1973(A) and 36-1974(C), the Commission establishes and shall collect the following fees, which are not refundable unless A.R.S. § 41-1077 applies:

1. No change

2. No change
3. No change
4. Provisional license renewal application fee, $25; and
5. Penalty for late license renewal, $100~~; and~~
~~6. Duplicate license, $25~~.

B. ~~Before the Commission issues an initial license to an applicant, the Commission shall collect from the applicant a pro-rated license renewal application fee, which will make the initial license valid until the applicant's second birthday following issuance of the initial license. The Commission shall pro-rate the license renewal application fee as follows:~~ The Commission shall charge $25 to:

1. Replace an identification badge,
2. Issue a duplicate license.

~~1. Generalist or legal license renewal application fee: $5 for each month between issuance of the initial license and the applicant's first birthday following issuance of the initial license to a maximum of $50; and~~

~~2. Provisional license renewal application fee: $2.50 for each month between issuance of the initial license and the applicant's first birthday following issuance of the initial license to a maximum of $25.~~

R9-26-509. Procedures for Processing Applications; ~~Time-frames~~ Time Frames

A. For the purpose of A.R.S. § 41-1073, the Commission establishes the following licensing ~~time-frames~~ time frames:

1. Administrative completeness review ~~time-frame~~ time frame: 30 days;
2. Substantive review ~~time-frame~~ time frame: 60 days; and
3. Overall ~~time-frame~~ time frame: 90 days.

B. The administrative completeness review ~~time-frame~~ time frame listed in subsection (A)(1) begins on the date ~~that~~ the Commission receives a license application or license renewal application. During the administrative completeness review ~~time-frame~~ time frame, the Commission shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Commission shall specify in the notice what information is missing.

C. An applicant with an incomplete application shall supply the missing information within 30 days from the date of the notice. Both the administrative completeness review and overall ~~time-frames~~ time frames are suspended from the date of the Commission's notice until the date that the Commission's office receives all missing information.

D. Upon receipt of all missing information, the Commission shall notify the applicant that the application is complete. The Commission shall not send a separate notice of completeness if the Commission grants or denies a license within the administrative completeness review ~~time-frame~~ time frame in subsection (A)(1).

E. The substantive review ~~time-frame~~ time frame listed in subsection (A)(2) begins on the date of the Commission's notice of administrative completeness or on expiration of the time listed in subsection (A)(1).

F. If the Commission determines during the substantive review ~~time-frame~~ time frame that additional information is needed, the Commission shall send the applicant a comprehensive written request for the additional information. The applicant shall supply the additional information within 60 days from the date of the request. Both the substantive review and overall ~~time-frames~~ time frames are suspended from the date on the Commission's request until the date ~~that~~ the Commission office receives the additional information.

G. If an applicant needs additional time in which to respond under subsection (C) or (F), the applicant shall submit a written notice of extension to the Commission before expiration of the time to respond that includes the date by which the applicant will submit the information. The applicant shall establish an extension date that is no more than 120 days from the date established under subsection (C) or (F).

H. If an applicant fails to submit information within the time provided under subsection (C) or (F) or as extended under subsection (G), the Commission shall close the applicant's file. An applicant whose file is closed and who later wishes to be licensed, shall apply anew.

I. Within the time listed in subsection (A)(3), the Commission shall:

1. Grant a license to an applicant who meets the requirements in A.R.S. § 36-1973 and this Article, or
2. Deny a license to an applicant who does not meet the requirements in A.R.S. § 36-1973 or this Article.

J. If the Commission denies a license, the Commission shall send the applicant a written notice explaining:

1. The reason for the denial with citations to supporting statutes or rules,
2. The applicant's right to appeal the denial and have a hearing,
3. The time for appealing the denial, and
4. The applicant's right to request an informal settlement conference.

R9-26-510. Continuing Education Requirement; Waiver; Extension of Time to Complete

A. Continuing education is required as a condition of licensure renewal. ~~During each license year, a licensee shall complete the following hours of continuing education:~~

1. ~~General~~ A generalist interpreter~~, eight hours;~~ shall complete continuing education required by NAD, RID, or BEI to maintain certification by NAD, RID, or BEI. If the certification of a generalist interpreter is suspended or revoked by NAD, RID, or BEI because the generalist interpreter failed to complete the required continuing education, the Commission shall initiate proceedings under Article 3 against the generalist interpreter's license.
2. A Class A legal interpreter shall complete continuing education required by NAD, RID, or BEI to maintain legal certification by NAD, RID, or BEI. If the certification of a Class A legal interpreter is suspended or revoked by NAD, RID, or BEI because the Class A legal interpreter failed to complete the

required continuing education, the Commission shall initiate proceedings under Article 3 against the legal interpreter's license.

3. A Class C or D legal interpreter shall complete continuing education required by NAD, RID, or BEI to maintain certification by NAD, RID, or BEI including at least 20 hours of legal training. If the certification of a Class C or D legal interpreter is suspended or revoked by NAD, RID, or BEI because the Class C or D legal interpreter failed to complete the required continuing education or if the Class C or D legal interpreter fails to complete the required hours of legal training, the Commission shall initiate proceedings under Article 3 against the legal interpreter's license.

~~2.~~4. ~~Legal~~ When renewing a license under R9-26-507(B), a provisional interpreter~~, Class A, or B, six hours, of which two hours are legal training~~ shall submit the evidence required under subsection (B) showing completion of 12 hours of continuing education~~;~~ . The Commission shall accept continuing education:

a. Designed to enhance the provisional licensee's skill and ability to provide quality interpreting to the deaf and hard-of-hearing community;

b. Approved by RID, NAD, or BEI, as applicable, for certification maintenance;

c. Provided by an accredited institution of higher education; or

d. Provided by an entity involved with the deaf and hard-of-hearing community.

~~3. Legal interpreter, Class C, six hours, of which three hours are legal training;~~

~~4. Legal interpreter, Class D, six hours, of which two hours are legal training;~~ and

~~5. Provisional interpreter, 12 hours.~~

~~**B.** Between the time of initial licensure and a licensee's first birthday following initial licensure, the licensee shall complete a pro-rated amount of the continuing education required under subsection (A).~~

~~**C.**~~**B.** A provisional licensee shall obtain from the provider of a continuing education attended by the licensee ~~a certificate of attendance~~ documentation that includes:

1. Licensee's name ~~and license number~~,
2. No change
3. No change
4. No change
5. No change

~~**D.** A licensee shall maintain the certificates of attendance described in subsection (C) for three years.~~

~~**E.** A licensee shall submit a copy of the certificates of attendance obtained during a license year if subject to an audit by the Commission under R9-26-511.~~

C. Waiver of continuing education requirement.

1. To obtain a waiver of the continuing education requirement, a provisional licensee shall submit to the Commission a written request that includes the following:

a. The period for which the waiver is requested,

b. Continuing education completed during the current license year and the documentation required under subsection (B), and

c. Reason a waiver is needed and supporting documentation:

i. For military service. A copy of current orders or a letter on official letterhead from the licensee's commanding officer;

ii. For absence from the United States. A copy of pages from the licensee's passport showing exit and reentry dates;

iii. For disability. A letter from the licensee's treating physician stating the nature of the disability; and

iv. For circumstances beyond the licensee's control. A letter from the licensee stating the nature of the circumstances and documentation that provides evidence of the circumstances.

2. The Commission shall grant a request for waiver of the continuing education requirement that:

a. Is based on a reason listed in subsection (C)(1)(c),

b. Is supported by the required documentation,

c. Is submitted no sooner than 60 days before and no later than the license expiration date, and

d. Will promote the safe and professional practice of interpreting in this state.

D. Extension of time to complete continuing education requirement.

1. To obtain an extension of time to complete the continuing education requirement, a provisional licensee shall submit to the Commission a written request that includes the following:

a. Ending date of the requested extension,

b. Continuing education completed during the current license year and the documentation required under subsection (B),

c. Proof of registration for additional continuing education that is sufficient to enable the provisional licensee to complete all continuing education required for license renewal before the end of the requested extension, and

d. Licensee's attestation that the continuing education 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.

2. The Commission shall grant a request for an extension that:

a. Specifies an ending date no more than three months from the current license expiration date,

b. Includes the required documentation and attestation,

c. Is submitted no sooner than 60 days before and no later than the license expiration date, and

d. Will promote the safe and professional practice of interpreting in this state.

E. Except as provided in subsection (D), a provisional licensee shall report only hours of continuing education obtained during the license year immediately preceding license renewal. A licensee shall not carry over hours in excess of those required under subsection (A)(4) to a subsequent license year.

R9-26-511. ~~**Audit of Compliance with Continuing Education Requirement**~~ **Video Remote Interpreting**

~~At the time of license renewal, the Commission shall provide notice of an audit of continuing education records to a random sample of licensees. A licensee subject to a continuing education an audit shall submit documentation that demonstrates compliance with the continuing education requirement at the same time the licensee submits the license renewal application form required under R9-26-507.~~

A. An interpreter who is licensed under A.R.S. Title 36, Chapter 17.1 and this Article is authorized to provide VRI only for individuals who are located in Arizona.

B. An interpreter who is licensed under A.R.S. Title 36, Chapter 17.1 and this Article and provides VRI shall comply fully with the requirements of this Article.

C. An interpreter who is located outside of Arizona shall not provide VRI for an individual located in Arizona before being licensed under A.R.S. Title 36, Chapter 17.1 and this Article.

R9-26-512. ~~**Making a Complaint**~~ **Renumbered**

R9-26-515. ~~**Hearing Procedures**~~ **Identification Badge Required**

A. To protect the public, a licensee shall have and present on request, an identification badge issued by the Commission whenever the licensee provides interpreting services.

B. A licensee who loses or damages the identification badge required under subsection (A) may obtain a replacement identification badge by submitting a request to the Commission and paying the charge specified under R9-26-508.

R9-26-516. ~~**Rehearing or Review of Commission Decision**~~ **Renumbered**

R9-26-517. ~~**Disciplinary Action**~~ **Renumbered**

R9-26-518. ~~**Change of Name or Address**~~ **Required Notices to the Commission**

A. If a licensee's certification by RID, NAD, BEI, or other acceptable certifying entity is suspended, revoked, or subject to other disciplinary action by RID, NAD, BEI, or the other acceptable certifying entity, the licensee shall provide immediate written notice of the disciplinary action to the Commission. Failure to provide the notice required under this subsection is unprofessional conduct.

B. If a licensee's state-issued certification submitted as qualification for a Class B provisional license is suspended, revoked, or subject to other disciplinary action by the state that issued the certification, the licensee shall provide immediate written notice of the disciplinary action to the Commission. Failure to provide the notice required under this subsection is unprofessional conduct.

C. The Commission shall communicate with a licensee or applicant using the name and address provided to the Commission by the licensee or applicant. To ensure timely receipt of communication from the Commission, a licensee or applicant shall notify the Commission of any change in the licensee's or applicant's name or address.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]

TITLE 9. HEALTH SERVICES

CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

1. Identification of the rulemaking:

After eight years of experience using its current rules, the Commission determined changes were needed to its licensing standards. This is due, in part, to the fact that as of June 30, 2005, the National Association of the Deaf stopped giving certification examinations. Certifications issued by NAD before June 30, 2005, remain valid but it currently is not possible to be certified by NAD. Additionally, as of January 1, 2016, the Registry of Interpreters for the Deaf has imposed a moratorium on providing certification examinations. Although certifications issued by RID before January 1, 2016, remain valid, it currently is not possible to be certified by RID. In this rulemaking, the Commission is adding the Board for Evaluation of Interpreters (BEI) as an acceptable certifying entity. Without the addition of certification by BEI, it would not be possible for interpreters to obtain the certification necessary for licensure by the Commission.

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

Because of the actions of NAD and RID, it currently is not possible for interpreters in Arizona to obtain the certification necessary for licensure by the Commission. Without this rulemaking, there is no acceptable certifying entity operating in Arizona.

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:

Interpreters who are not currently certified are unable to become certified. Without certification, an interpreter cannot be licensed by the Commission and, under A.R.S. § 36-1971(A), is unable to practice as an interpreter for the deaf and hard of hearing. This negatively impacts deaf and hard of hearing consumers by making it increasingly difficult to obtain interpreting services.

[1] 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 in effect, there will be another option for certification available in Arizona. Interpreters who are not currently certified will be able to obtain the certification necessary for licensure by the Commission.

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

Most of the changes made in this rulemaking will have minimal economic impact. The Commission believes the following will have minimal economic impact:

- Using the date of license issuance rather than the licensee's birthday as the start of the licensee's license year;
- Adding the BEI as an acceptable certifying entity;
- Eliminating Class B as a category of legal interpreters. There currently are no Class B legal interpreters;
- Providing standards for video remote interpreting; and
- Requiring licensees to have an identification badge provided by the Commission available when working and to present the badge on request;
- Requiring licensees to have while working an identification badge provided by the Commission and to present the badge on request; and
- Except for provisional licensees, relying on the certifying entity to monitor compliance with continuing education.

The Commission believes the following changes will have some economic impact:

- Requiring Class A legal interpreters who do not have a legal certification from RID to obtain legal certification from an acceptable certifying entity within five years;
- Increasing the hours of required paid interpreting from 25 to 500 for Class D legal interpreters;
- Increasing the hours of required legal training from 24 to 50 for Class C and D legal interpreters;
- Limiting the number of short-term registrations to two during an interpreter's lifetime;

- Clarifying that, like a licensee, a short-term registrant is required to be certified;
- Limiting a generalist interpreter to working in a legal setting only when appointed by a judge;
- Increasing the time an interpreter may work under a provisional license from three to five years; and
- Requiring a provisional licensee to submit evidence of compliance with the CE requirement at the time of annual license renewal rather than using compliance audits.

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: Carmen Green, Deputy Director

Address: Commission for the Deaf and the Hard of Hearing
100 N. 15th Ave., Suite 104
Phoenix, AZ 85007

Telephone: (602) 542-3362

Fax: (602) 542-3380

E-mail: C.green@acdhh.az.gov

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

Currently licensed interpreters, applicants for licensure, and the Commission will be directly affected by, bear the costs of, and directly benefit from the rulemaking. Users of interpreter services will be indirectly affected by and benefit from the rulemaking.

There are approximately 1.1 million Arizonans who are deaf or hard of hearing. Any resident with a hearing loss validated by a hearing health care professional is eligible to receive services or devices from the telecommunications equipment program. Of those eligible, 824 currently have equipment provided under the telecommunications equipment program. The telecommunications equipment program is funded through taxes imposed under A.R.S. § 42-5252(B) on providers of wired and wireless telecommunication services. During the last year,

this tax generated $4,904,545. There were 413 applicants for telecommunications equipment last year. The average voucher provided under the program is valued at $292.

The Commission currently licenses 397 interpreters: 291 general, 59 legal, and 47 provisional. The Commission received new applications from 50 individuals last year. All applicants were licensed. Five were licensed as legal interpreters, 27 as general, and 18 as provisional.

The Americans with Disabilities Act requires use of "qualified interpreters." The implementing regulations define a qualified interpreter as one who is able to interpret effectively, accurately, and impartially both receptively and expressively, and use any specialized vocabulary. Proceedings in a courtroom involve use of a specialized vocabulary. Fifteen of the 59 legal interpreters licensed by the Commission hold a legal certification. Within the industry and Maricopa County Superior Court system, a legal certification is considered the minimum necessary to interpret in a courtroom setting.[2] In this rulemaking, an interpreter will be able to maintain a Legal A interpreter license only if the interpreter has a legal certification. The rulemaking provides five years for Legal A interpreters without a legal certification to obtain the certification. Currently, BEI is the only entity offering a legal certification. A Legal A interpreter who seeks a legal certification from BEI will have to have 48 hours of legal training and both written and performance examinations, which cost $335.

According to Jeremy Brunson, interpreter coordinator for Maricopa County Superior Court, the courts will hire only an interpreter with a legal certification.[3] As a result, Legal A interpreters who lack legal certification are not being employed for courtroom proceedings

[2] See Interpreting in Legal Settings, Standard Practice Paper, issued by Registry of Interpreters for the Deaf in 2007 **https://drive.google.com/file/d/0B3DKvZMflFLdTHo1OVFrVW4ySFk/view**

[3] The courts are concerned about the quality of all courtroom interpreting services and have instituted a program to credential foreign language interpreters. See Arizona Supreme Court, Administrative Order 2016-02, In the Matter of Credentialing for Court Interpreters.

and the current rulemaking will not disadvantage them because, with or without this rulemaking, a Legal A interpreter who wants to be employed for courtroom proceedings needs to obtain a legal certification. There is a cost to obtaining a legal certification but that cost is not the result of this rulemaking and is borne voluntarily by an interpreter who wants the advantage of being employable within a courtroom.

There is a potential economic consequence for an interpreter currently licensed as Legal A who does not have and fails to obtain a legal certification within five years. The interpreter will cease to be qualified to be licensed as Legal A, become licensed as Legal C, and be required, when working in a legal setting, to team with a Legal A interpreter. Unless the number of interpreters with legal certification increases, teaming with a Legal A interpreter may be a challenge.

A Class D legal interpreter is deaf or hard of hearing. These interpreters usually work only with consumers who do not use standard American Sign Language. In these cases, the deaf or hard of hearing interpreter is able to communicate with the consumer using native signs. A deaf or hard of hearing interpreter always works with a hearing interpreter. The industry emphasis on ensuring quality interpreters, especially in legal settings, extends to Class D legal interpreters. Increasing the required number of hours of paid interpreting from 25 to 500 is part of the effort to improve the quality of interpreting in a legal setting. A Class A or C legal interpreter is required to have 10,000 hours of paid interpreting. It takes approximately five years to obtain those hours. There are fewer opportunities for deaf and hard of hearing interpreters but those in the community believe it is reasonable to obtain 500 hours of paid interpreting in five years. Therefore, the increase in the required number of hours of paid interpreting is commensurate with the requirement for hearing interpreters. The deaf or hard of hearing interpreter will not be disadvantaged by this requirement because the deaf or hard

of hearing interpreter can work in all settings except legal settings while obtaining the required hours.

Working in a legal setting involves knowing and being able to use a specialized vocabulary and being familiar with legal proceedings. Increasing the number of hours of legal training from 24 to 50 for Class C and D legal interpreters is designed to ensure familiarity with the specialized vocabulary and proceedings. The increased hours are consistent with recommendations by certifying entities.

The limit of two short-term registrations in an interpreter's lifetime addresses a concern of the Commission and licensees who see interpreters repeatedly working in Arizona without obtaining a license. Since 2007, 303 interpreters have obtained a short-term registration. Thirty-five of the registrants (12%) accounted for 26% of the short-term registrations. This provision will have economic impact on interpreters who have been working under a short-term registration. If they are qualified, they will be able to obtain a license for the modest fee charged by the Commission. If they are not qualified, it is inconsistent with the ADA to allow them to provide interpreting services in Arizona.

Both generalist and legal interpreters are required to comply with the continuing education requirements of their certifying entities. Only provisional interpreters, who are not required to be certified, are required to comply with a CE requirement established by the Commission. The Commission has added a requirement that a provisional licensee submit evidence of compliance with the CE requirement at the time of license renewal. The economic impact of attaching documentation to the renewal application is minimal. Receiving documentation annually enables the Commission to address compliance issues as they occur and avoids the expense of using an audit procedure to assess compliance.

During the last year, the Commission received six complaints. All the complaints were resolved by settlement rather than a hearing. Two licensees paid a monetary settlement to resolve the complaints against them.

Last year, the Commission collected $21,120 in licensing fees, which does not cover the cost of operating the licensing program. The Commission's current appropriation is $4,021,000. The Commission currently has 15 FTEs.

The Commission incurred the cost of making these rules and will incur the cost of implementing them. It will have the benefit of having rules that are consistent with industry standards, provide an avenue for Arizona interpreters to obtain a certification necessary for licensure, and ensure qualified interpreters are available to assist deaf and hard of hearing citizens of Arizona.

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 Commission is the only state agency directly affected by this rulemaking. Its costs and benefits are discussed in item 4. The Commission will not need a new FTE to implement and enforce the rules in this rulemaking.

   b. Costs and benefits to political subdivisions directly affected by the rulemaking:

      No political subdivision is directly affected by this rulemaking.

   c. Costs and benefits to businesses directly affected by the rulemaking:

      The only businesses directly affected by the rulemaking are individual interpreters. Their costs and benefits are discussed in item 4.

6. Impact on private and public employment:

   The Commission expects there to be no impact of private or public employment.

7. Impact on small businesses[4]:

   a. Identification of the small business subject to the rulemaking:

      Individual interpreters are small businesses subject to this rulemaking.

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

      Costs resulting from this rulemaking include the cost of submitting an initial and renewal application, submitting a photograph for use in an identification badge, obtaining the education and work experience necessary for licensure, passing a certification examination, taking the continuing education needed to maintain certification, and paying a fee for initial and renewal licensure.

   c. Description of methods that may be used to reduce the impact on small businesses:

      Because the small businesses impacted by this rulemaking are individuals and because all those impacted by this rulemaking are individuals, it is not possible to reduce the impact of the rulemaking on small businesses.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

   Private persons and consumers are not directly affected by the rulemaking. However, deaf and hard of hearing Arizonans will be indirectly affected by the Commission's efforts to ensure all interpreters are qualified.

9. Probable effects on state revenues:

   There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

    No less intrusive or less costly alternative methods are possible if the Commission is to fulfill its statutory responsibility to license qualified interpreters. The Commission believes it has provided flexibility in the licensing process and maximized the opportunity for all interpreters to become licensed.

[4] Small business has the meaning specified in A.R.S. § 41-1001(21).

Commission for the Deaf and the Hard of Hearing

TITLE 9. HEALTH SERVICES

CHAPTER 26. COMMISSION FOR THE DEAF AND THE HARD OF HEARING

(Authority: A.R.S. §§ 36-1946 and 36-1947 et seq.)

ARTICLE 1. GENERAL

Section
R9-26-101. Definitions

ARTICLE 2. TELECOMMUNICATIONS EQUIPMENT DISTRIBUTION PROGRAM

Section
R9-26-201. Eligibility
R9-26-202. Application Process
R9-26-203. Persons Authorized to Certify Need for Telecommunications Equipment
R9-26-204. Vouchers
R9-26-205. Redeeming a Voucher
R9-26-206. Confidentiality
R9-26-207. Repealed

ARTICLE 3. ADMINISTRATIVE PROCEDURES

Section
R9-26-301. Hearings
R9-26-302. Informal Settlement Conference
R9-26-303. Rehearing or Review of Decision
R9-26-304. Renumbered
R9-26-305. Renumbered

ARTICLE 4. RELAY SERVICES

Section
R9-26-401. Expired
R9-26-402. Expired
R9-26-403. Repealed

ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

(Authority: A.R.S. § 36-1946(A))

Article 5, consisting of Sections R9-26-501 through R9-26-511, adopted effective April 4, 1997 (Supp. 97-2).

Section
R9-26-501. Definitions
R9-26-502. License Application
R9-26-503. Application for Generalist Interpreter License
R9-26-504. Application for Legal Interpreter License
R9-26-505. Application for Provisional Interpreter License
R9-26-506. Short-term Registration of an Interpreter
R9-26-507. License Renewal
R9-26-508. Licensing Fees
R9-26-509. Procedures for Processing Applications; Time-frames
R9-26-510. Continuing Education Requirement
R9-26-511. Audit of Compliance with Continuing Education Requirement
R9-26-512. Making a Complaint
R9-26-515. Hearing Procedures
R9-26-516. Rehearing or Review of Commission Decision
R9-26-517. Disciplinary Action
R9-26-518. Change of Name or Address

ARTICLE 1. GENERAL

R9-26-101. Definitions

In addition to the definitions listed in A.R.S. § 36-1941, the following terms apply to this Chapter and to A.R.S. § 36-1947:

"Applicant" means a person who applies to the Commission for telecommunications equipment.

"Audiologist" means a person who is licensed under A.R.S. § 36-1940 by the Arizona Department of Health Services.

"Commission" means the Arizona Commission for the Deaf and Hard of Hearing.

"Deafblind" means a person who is either deaf or hard of hearing and:

Has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or

Has a field defect where the peripheral diameter of the visual field subtends an angular distance no greater than 20 degrees, or

Has a progressive visual loss with a prognosis of one or both of the conditions stated in the two preceding subsections.

"Director" means the Executive Director of the Arizona Commission for the Deaf and Hard of Hearing.

"Hearing aid dispenser" has the same meaning as in A.R.S. § 36-1901(8).

"Hearing or speech-related disability" means a disability that prevents a person from hearing or articulating speech audibly or clearly, including deafness.

"Program" means the Telecommunications Equipment Distribution Program.

"Recipient" means a person who receives telecommunications equipment through the Program.

"Relay operator" means a person hired by a telecommunication relay center to transmit a conversation between a person who is hearing or speech-related disabled and another person who uses a standard telephone.

"Severely hearing or speech impaired" under A.R.S. § 36-1947(A) means a hearing or speech-related disability.

"Telecommunications equipment" means equipment that allows a person with a hearing or speech-related disability to access the telephone network.

"Telecommunication relay center" means a facility authorized by the Commission to provide telecommunication services through a third party to a person with a hearing or speech-related disability, and to any other person who uses a standard telephone.

"Vendor" means a person who sells telecommunications equipment.

"Vocational rehabilitation counselor" means a Department of Economic Security employee who has a Master's degree in rehabilitation counseling from a university accredited by the National Council on Rehabilitation Education and who is certified by the Commission on Rehabilitation Counseling.

"Voucher" means the Commission's authorization of payment for telecommunications equipment.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Amended by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3).

ARTICLE 2. TELECOMMUNICATIONS EQUIPMENT DISTRIBUTION PROGRAM

R9-26-201. Eligibility

To be eligible for telecommunications equipment through the Program, a person shall:

1. Reside in Arizona;
2. Have a need for telecommunications equipment available through the Program due to a hearing or speech-related disability, as certified by an authorized person described in R9-26-203;
3. Have access to a telephone line in the person's place of residence;
4. Not have used a voucher to purchase telecommunications equipment within five years before the date of application under R9-26-202(A)(1) unless the individual's disability status has changed during that time; and,
5. Have returned to the Commission all telecommunications equipment that was distributed to the person by the Commission before June 30, 2002.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3).

R9-26-202. Application Process

To apply for telecommunications equipment under the Program, an eligible person shall:

1. Request an application for participation in the Program from the Commission; and
2. Complete and return the application to the Commission with certification from an authorized person described under A.A.C. R9-26-203 that the applicant has a hearing or speech-related disability and needs the telecommunication equipment requested on the application.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-202 renumbered from R9-26-301 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3).

R9-26-203. Persons Authorized to Certify Need for Telecommunications Equipment

A. The following licensed professionals may certify an applicant's hearing or speech-related disability and need for the requested telecommunications equipment:

1. A dispensing audiologist licensed in accordance with A.R.S. Title 36, Chapter 17;

2. An audiologist licensed in accordance with A.R.S. Title 36, Chapter 17;
3. A physician licensed in accordance with A.R.S. Title 32, Chapter 13;
4. A physician assistant licensed in accordance with A.R.S. Title 32, Chapter 25;
5. A nurse practitioner licensed in accordance with A.R.S. Title 32, Chapter 15;
6. A speech-language pathologist licensed in accordance with A.R.S. Title 36, Chapter 17;
7. A hearing aid dispenser licensed in accordance with A.R.S. Title 36, Chapter 17; or
8. A vocational rehabilitation counselor.

B. By certifying a hearing or speech-related disability and need for the requested telecommunications equipment, the certifier attests that the certifier:

1. Is authorized to certify under subsection (A);
2. Has evaluated the applicant's hearing or speech-related disability to determine the applicant's need for the telecommunications equipment requested on the application; and
3. Has determined that the applicant will benefit from the telecommunications equipment requested on the application.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-203 renumbered from R9-26-304 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3).

R9-26-204. Vouchers

A. The Commission shall issue to an eligible applicant an individually numbered voucher for a specified dollar amount for the applicant to purchase telecommunications equipment for which the applicant has a certified need. The voucher shall be used only towards the purchase of the telecommunications equipment specified on the voucher.

B. Vouchers are non-transferable and have no cash value.

C. A voucher expires 90 days after its issuance date.

D. If a voucher is lost or stolen, the applicant may apply for a replacement voucher by requesting, completing and returning to the Commission a replacement voucher form in which the applicant shall attest under penalty of perjury that:

1. The original voucher was stolen or lost; and
2. If the original voucher is recovered, the original voucher shall be returned to the Commission within 30 days of its recovery date.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-204 renumbered from R9-26-305 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3).

R9-26-205. Redeeming a Voucher

A. To redeem a voucher for telecommunications equipment under this Program, a vendor shall submit to the Commission the voucher with a copy of a receipt, which is signed by the vendor and the recipient of the telecommunications equipment and which specifies the telecommunications equipment sold and its purchase price.

B. The Commission shall verify the accuracy of information submitted on the receipt and the validity of the voucher.

C. The Commission shall reimburse to the vendor the portion of the purchase price of the telecommunications equipment that does not exceed the amount printed on the voucher.

D. The Commission shall not reimburse to the vendor an amount in excess of the amount printed on the voucher.

E. If the amount printed on the voucher exceeds the purchase price of the telecommunications equipment, the vendor shall not refund the difference between the two amounts to the recipient of the telecommunications equipment in any form including money, equipment, or other goods and services.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-302 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). New Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3).

R9-26-206. Confidentiality

A. The Commission shall use the information provided by the Program's applicants or recipients in the course of the administration of the Program solely to administer the Program.

B. The Commission shall not disclose the name of an applicant for or a recipient of telecommunications equipment without a written request for disclosure.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-301 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). New Section made by final rulemaking at 8 A.A.R. 4292, effective November 18, 2002 (Supp. 02-3).

R9-26-207. Repealed

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 3. ADMINISTRATIVE PROCEDURES

R9-26-301. Hearings

A. Within 30 days of a notice of denial from the Director, the applicant or recipient may file a notice of appeal under A.R.S. § 41-1092.03 with the Commission. The notice shall identify the party, the party's address, the agency, the action being appealed, and shall contain a concise statement of the reasons for the hearing.

B. The hearing shall be conducted by the Office of Administrative Hearings as prescribed in A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-202; new Section R9-26-301 renumbered from R9-26-206 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-302. Informal Settlement Conference

A. An applicant or recipient whose request for an original or replacement device is denied and who has filed an appeal under A.R.S. § 41-1092.03, may request in writing that the Director hold an informal settlement conference.

B. The informal settlement conference shall be held within 15 days after receiving the request and shall follow the procedures under A.R.S. § 41-1092.06.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-302 renumbered from R9-26-205 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-303. Rehearing or Review of Decision

A. Any party to a case who is aggrieved by a decision rendered in the case may, within 30 days after the date of the Commission's decision, file with the Director a written request for a rehearing or review of the decision. The request shall specify the particular grounds for the rehearing or review. The requesting party shall serve copies upon all other parties. A request for rehearing or review under this Section may be amended at any time before it is ruled upon by the Director.

B. The opposing party may file a response to the request for a rehearing or review within 15 days after the written request is received.

C. A rehearing or review of the decision may be granted for any of the following causes which materially affect the requesting party's rights:

1. Irregularity in the proceedings or any abuse of discretion that deprives the requesting party of a fair hearing;
2. Misconduct of the hearing officer or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring during the proceedings;
7. That the decision is the result of passion or prejudice; or
8. That the decision is not supported by the evidence or is contrary to law.

D. Upon examination of a request for rehearing or review and any response, the Director may affirm or modify the decision.

E. Within 15 days after a decision is rendered, the Director may, on the Director's own initiative, order a rehearing or review of a decision for any reason for which a rehearing on motion of a party might have been granted. The order granting the rehearing shall specify the grounds for the review of the decision.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-304. Renumbered

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-203 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-305. Renumbered

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-204 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 4. RELAY SERVICES

R9-26-401. Expired

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 4411, effective September 30, 2007 (Supp. 07-4).

R9-26-402. Expired

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 4411, effective September 30, 2007 (Supp. 07-4).

R9-26-403. Repealed

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 5. INTERPRETER LICENSURE AND REGULATION

R9-26-501. Definitions

In addition to the definitions in A.R.S. §§ 12-242 and 36-1941, in this Article, the following definitions apply unless otherwise specified:

"ACCI" means American Consortium of Certified Interpreters, an organization that certifies interpreters at one of three levels: ACCI Generalist, ACCI Advanced, or ACCI Master.

"Accredited" means approved by the:

New England Association of Schools and Colleges,
Middle States Association of Colleges and Secondary Schools,
North Central Association of Colleges and Schools,
Northwest Association of Schools and Colleges,
Southern Association of Colleges and Schools, or
Western Association of Schools and Colleges.

"Applicant" means an individual seeking an original or renewal license from the Commission.

"Application" means the documents, forms, and additional information required by the Commission to be submitted by or on behalf of an applicant.

"CDI" means certified deaf interpreter, a certification issued by RID.

"CI" means certificate of interpretation, a certification issued by RID.

"CLIP-R" means conditional legal interpreting permit--relay, a certification issued by RID to a deaf or hard-of-hearing interpreter or transliterator who works in a legal setting.

"Continuing education" means a workshop, seminar, lecture, conference, class, or other educational activity relevant to the practice of interpreting.

"CSC" means comprehensive skills certificate, a certification issued by RID.

"CT" means certificate of transliteration, a certification issued by RID.

"Direct supervision" means an individual licensed under R9-26-503 or R9-26-504 is physically present when an individual licensed under R9-26-505 provides interpreting services.

"EIPA" means educational interpreter performance assessment, a diagnostic tool that measures proficiency in interpreting for children or young adults in an educational setting.

"Generalist interpreter" means an individual who provides interpreting in any community setting for which the individual is qualified by education, examination, and work history.

"IAC" means interpreter advisory committee.

"IC" means interpretation certificate, a certification issued by RID.

"Interpreter" means an individual who provides interpreting.

"Legal interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting in a legal setting.

"Class A legal interpreter" means a legal interpreter who provides interpreting in court, a police environment, or administrative adjudicatory proceedings.

"Class B legal interpreter" means a legal interpreter who provides interpreting in administrative adjudicatory proceedings only.

"Class C legal interpreter" means a legal interpreter who provides interpreting in a legal setting when teamed with a Class A or Class B legal interpreter.

"Class D legal interpreter" means a legal interpreter who is also either a deaf or hard-of-hearing interpreter or an oral transliterator.

"Legal training" means a structured program presented by the Commission, a court, Bar Association, law-enforcement association, RID, accredited institution, or comparable organization, providing information relevant to legal interpreting such as the following:

The requirements of A.R.S. § 12-242,

Commission for the Deaf and the Hard of Hearing

The structure of the judiciary system of this state,

The judiciary process of this state,

Administrative adjudicatory procedures,

Law enforcement procedures related to interpreting, or

Commonly used legal terms.

"Licensee" means an interpreter who holds a current license issued under A.R.S. § 36-1974 and this Article.

"Mentor" means an individual licensed under R9-26-503 or R9-26-504 who agrees to assist a provisional licensee to develop as an interpreter by occasionally observing the provisional licensee providing interpreting services and providing feedback.

"MCSC" means master comprehensive skills certificate, a certification issued by RID.

"NAD" means the National Association of the Deaf, which issues three levels of certification: NAD III (generalist), NAD IV (advanced), and NAD V (master).

"NIC" means National Interpreter Certification, a certification issued by NAD-RID at one of three levels, NIC Certified, NIC Advanced, or NIC Master.

"OIC" means oral interpreting certificate, a certification issued by RID in one of three categories: comprehensive, spoken to visible, or visible to spoken.

"Oral transliteration" means to facilitate communication between an individual who is deaf or hard of hearing and an individual who hears by using inaudible speech and natural gestures to convey a message to the deaf or hard-of-hearing individual and understanding and verbalizing the message and intent of the speech and mouth movements of the individual who is deaf or hard of hearing.

"OTC" means oral transliteration certificate, a certification issued by RID.

"Provisional interpreter" means an individual who is qualified by education, examination, and work history to provide interpreting while pursuing RID certification.

"Class A provisional interpreter" means a provisional interpreter who provides oral transliteration and does not have an OTC.

"Class B provisional interpreter" means a provisional interpreter who was paid for interpreting services before the effective date of this Article and is qualified to provide interpreting services when working with a mentor or when teamed with an individual licensed under R9-26-503 or R9-26-504.

"Class C provisional interpreter" means a provisional interpreter who is qualified to provide interpreting services only under direct supervision.

"Class D provisional interpreter" means a provisional interpreter who is deaf or hard of hearing and does not have a CDI.

"Qualified interpreter" means an individual licensed under this Chapter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary required by the interpreting situation.

"RID" means Registry of Interpreters for the Deaf.

"RSC" means reverse skills certificate, a certification issued by RID.

"SC:L" means specialist certificate: legal, a certification issued by RID.

"SC:PA" means specialist certificate: performing arts, a certification issued by RID.

"TC" means transliteration certificate, a certification issued by RID.

"Team" means two or more licensed interpreters providing interpreting for an individual or group of individuals during a single interpreting session.

"Unprofessional conduct," as used in A.R.S. § 36-1976, means violation of the NAD-RID Code of Professional Conduct, 2005, which is incorporated by reference and available from the Commission and RID, 333 Commerce Street, Alexandria, VA 22314, or www.rid.org. The material incorporated includes no later edition or amendment.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-502. License Application

A. An applicant for an original license shall submit to the Commission the following information, on an application form provided by the Commission:

1. Applicant's full name;
2. Applicant's Social Security number;
3. Applicant's home or business address;
4. Applicant's e-mail address;
5. Applicant's home, business, or mobile telephone number;
6. Applicant's birth date;
7. Any name by which the applicant has ever been known;
8. Category of licensure for which application is made and if applicable, the class of legal or provisional interpreter license for which application is made;
9. Name of any state or foreign country in which the applicant is or has been licensed or certified to practice as an interpreter, the license or certificate number, date issued, date expired, and a statement whether the license or certificate is or has ever been the subject of discipline and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;

10. A statement of whether the applicant has ever been denied a license or certificate to practice as an interpreter by a government licensing authority and if the answer is yes, a complete explanation of the denial including date, name of the government licensing authority, and reason for denial;
11. A statement of whether the applicant has ever been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction and if the answer is yes, a complete explanation of the charge and place and date of conviction;
12. A statement of whether the applicant has been adjudicated insane or incompetent and if the answer is yes, a complete explanation including date and place of adjudication;
13. A statement of whether the applicant wishes to have the applicant's professional credentials and contact information listed on the Commission's web site and in Commission materials; and
14. A statement signed by the applicant verifying the truthfulness of the information provided and affirming that the applicant will comply with the NAD-RID Code of Professional Conduct.

B. In addition to the form required under subsection (A), an applicant shall submit or have submitted on the applicant's behalf the following:
1. Documentation of name change if the applicant is applying under a name different from the name on the applicant's credentials;
2. A photocopy of the applicant's:
   a. High school diploma or GED, or
   b. Diploma from an accredited college or university;
3. If the answer to subsection (A)(10), (A)(11), or (A)(12) is yes, a copy of any relevant order; and
4. The fee required under R9-26-508.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-503. Application for Generalist Interpreter License

To apply for a generalist interpreter license, an applicant shall:
1. Comply with R9-26-502; and
2. Submit a photocopy of the front of the applicant's current RID membership card showing that the applicant holds one or more of the following certifications:
   a. NAD III, IV, or V;
   b. RID CDI, CI, CLIP-R, CSC, CT, IC, MCSC, OIC, OTC, RSC, SC:L, SC:PA, or TC; or
   c. NIC Certified, Advanced, or Master.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-504. Application for Legal Interpreter License

A. To apply for a legal interpreter license, an applicant shall comply with R9-26-502 and submit documentation of the following:
1. Certification by RID or NAD.
   a. For a Class A legal interpreter license, SC:L, NIC Advanced or Master, NAD IV or V, CI and CT, or CSC is required;
   b. For a Class B legal interpreter license, NIC Advanced or Master, NAD IV or V, CI, CT, or CSC is required;
   c. For a Class C legal interpreter license, NIC Certified, Advanced, or Master, NAD III, IV, or V, CI, CT, or CSC is required; and
   d. For a Class D legal interpreter license, CDI, CLIP-R, OIC, or OTC is required;
2. Hours of paid interpreting after initial certification by RID or NAD.
   a. For a Class A, Class B, or Class C legal interpreter license, 10,000 hours are required; and
   b. For a Class D legal interpreter license, 25 hours are required; and
3. Hours of legal training. Twenty-four hours in the five years before the date of application are required.

B. The Commission shall accept the following documentation:
1. RID or NAD certification.
   a. A photocopy of the front of the current membership card provided by RID or NAD, and
   b. A photocopy of the certificate provided by RID or NAD or a copy of the letter received from RID or NAD at the time of initial certification;
2. Hours of paid interpreting.
   a. An applicant shall submit an affidavit affirming that the applicant provided the number of hours of paid interpreting required under subsection (A)(2) after initial certification by RID or NAD; and
   b. Within the time provided under R9-26-509(F) and upon receipt of a comprehensive written request for documentation of the hours of paid interpreting provided, an applicant shall submit evidence that demonstrates the truthfulness of the affirmation provided under subsection (B)(2)(a).
3. Hours of legal training. A photocopy of a certificate of attendance from the organization providing the legal training that includes the information required under R9-26-510(C).

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Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-505. Application for Provisional Interpreter License

A. To apply for a provisional interpreter license, an applicant shall comply with R9-26-502 and submit documentation of the following:
1. Education. The following hours of participation in an interpreter-preparation training program offered by an accredited college or university or approved by RID:
   a. Class A or D provisional license: 40 hours; and
   b. Class B or C provisional license: 80 hours;
2. Examination. Pass the written portion of the NIC or RID examination; and
3. Work experience. The following hours of interpreting for which a license is not required under A.R.S. § 36-1971:
   a. Class A provisional license: 24 hours;
   b. Class B provisional license:
      i. 150 hours for which the applicant received pay before May 1, 2007;
      ii. A score of at least 4.0 on the EIPA performance test; or
      iii. ACCI certification;
   c. Class C provisional license: 80 hours; and
   d. Class D provisional license: 40 hours.

B. In addition to the documentation required under subsection (A):
1. An applicant for a provisional interpreter license shall ensure that letters of recommendation are submitted directly to the Commission by two individuals who are familiar with the applicant's skill as an interpreter. An individual who submits a letter of recommendation shall use a form that is available from the Commission and provide the following information:
   a. Name of the applicant for a provisional interpreter license;
   b. The following information about the individual completing the letter of recommendation form:
      i. Name;
      ii. Telephone number;
      iii. Interpreter license number, if any;
      iv. How long the individual has known the applicant;
      v. The capacity in which the individual knows the applicant; and
      vi. Why the individual believes the individual is qualified to assess the applicant's skill as an interpreter;
   c. An assessment of the applicant's receptive, expressive, and voicing skills; and
   d. The individual's dated signature.
2. An applicant for a Class B provisional license shall:
   a. Have a letter submitted directly to the Commission by an individual licensed under R9-26-503 or R9-26-504 indicating that the individual agrees to:
      i. Act as a mentor to the applicant if the applicant is granted a provisional license;
      ii. Observe the provisional licensee providing interpreting services at least once each month;
      iii. Provide feedback to the provisional licensee following each observation; and
      iv. Provide 30-days notice to the provisional licensee and the Commission before terminating the mentoring relationship; and
   b. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:
      i. Make and maintain a record of each time the mentor observes the applicant and a summary of the feedback provided; and
      ii. Make the record maintained under subsection (B)(2)(b)(i) available to the Commission upon request; or
   c. Submit a letter to the Commission indicating that if the applicant is issued a provisional license, the applicant agrees to:
      i. Team with an individual licensed under R9-26-503 or R9-26-504 for an average of eight hours each month;
      ii. Maintain a journal that records the dates on which and the name of the licensee with whom teaming was done and a summary of any feedback provided; and
      iii. Make the journal maintained under subsection (B)(2)(c)(ii) available to the Commission upon request.

C. The Commission shall accept the following documentation of the criteria in subsection (A):
1. Education. A photocopy of certificates of completion showing that the applicant completed hours of interpreter preparation training required under subsection (A)(1);
2. Examination. A photocopy of the letter provided by NIC or RID indicating that the applicant passed the written portion of either the NIC or RID examination;
3. Work experience.
   a. One or more letters, each of which is signed by an individual or a representative of an entity for whom the applicant provided interpreting, indicating:
      i. The name of the applicant,
      ii. The dates on which interpreting was provided, and
      iii. The hours of interpreting provided by the applicant; and
   b. For an applicant for a Class B provisional license:
      i. A photocopy of the letter provided by EIPA indicating the applicant's score on the EIPA performance test; or

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ii. A photocopy of the applicant's ACCI certificate.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 35, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-506. Short-term Registration of an Interpreter

A. To register with the Commission to provide interpreting in Arizona in a non-legal situation for fewer than 20 days in a year, an interpreter shall submit the following information in writing to the Commission:

1. Interpreter's name;
2. Interpreter's business addresses;
3. Interpreter's business and mobile telephone numbers;
4. Dates on which interpreting will be provided; and
5. Date of most recent short-term registration with the Commission, if any.

B. In addition to complying with subsection (A), the interpreter shall submit a copy of the interpreter's RID membership card or license from a government licensing authority.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-507. License Renewal

A. Renewal of a generalist or legal interpreter license.

1. A generalist or legal interpreter license expires on the licensee's birthday beginning with the licensee's second birthday following initial licensure. To continue to practice as a generalist or legal interpreter, the licensee shall, no more than 60 days before the licensee's birthday, submit to the Commission a license renewal application form that provides the following information about the licensee:
   a. Full name;
   b. Social Security number;
   c. Arizona interpreter license number;
   d. Home or business address;
   e. E-mail address;
   f. Home, business, or mobile telephone number;
   g. If applicable, the name of the licensee's employer and the employer's address and telephone number;
   h. Name of any state or country in which the licensee is or has been licensed or certified to practice as an interpreter, the license or certificate number, and a statement whether the license or certificate has been the subject of discipline since the date of last application and if the answer is yes, a complete explanation of the discipline including date, nature of complaint, and discipline imposed;
   i. A statement of whether the licensee has been denied a license or certificate to practice as an interpreter by a government licensing authority since the date of last application and if the answer is yes, a complete explanation of the denial including date, name of the government licensing authority, and reason for denial;
   j. A statement of whether the licensee has been convicted of a felony or of an offense involving moral turpitude in this or any other jurisdiction since the date of last application and if the answer is yes, a complete explanation of the charge and place and date of conviction;
   k. A statement of whether the licensee has been adjudicated insane or incompetent since the date of last application and if the answer is yes, a complete explanation including date and place of adjudication;
   l. A statement of whether the licensee wishes to have the licensee's professional credentials and contact information listed on the Commission's web site and in Commission materials; and
   m. A statement signed by the licensee attesting to the truthfulness of the information provided and affirming that the licensee will comply with the NAD-RID Code of Professional Conduct.
2. In addition to the license renewal application form required under subsection (A)(1), the generalist or legal licensee shall submit or have submitted on the licensee's behalf:
   a. A photocopy of the front of the licensee's current RID membership card;
   b. If the answer to the item in subsection (A)(1)(i), (A)(1)(j), or (A)(1)(k) is yes, a copy of any relevant order;
   c. An affirmation of compliance with the continuing education requirement in R9-26-510 or, if subject to an audit under R9-26-511, documentation that demonstrates compliance with the continuing education requirement; and
   d. The fee required under R9-26-508.
3. If a generalist or legal licensee fails to comply with subsections (A)(1) and (A)(2) on or before the licensee's birthday, the license expires and the former licensee shall cease providing interpreting for which a license is required under A.R.S. § 36-1971. The former licensee may renew the expired license by complying with subsections (A)(1) and (A)(2), affirming that the former licensee did not provide interpreting for which a license is required under A.R.S. § 36-1971 after the license expired, and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired.
4. If an expired license is not renewed under subsection (A)(3), the former licensee may obtain a license only by applying as a new applicant.

B. Renewal of a provisional interpreter license.

1. A provisional interpreter license expires on the licensee's birthday beginning with the second birthday following initial licensure and may be renewed once by complying with subsections (B)(2) and (B)(3).
2. To continue to practice as a provisional interpreter, the licensee shall, no more than 60 days before the licensee's birthday, submit to the Commission a license renewal application form that provides the information specified under subsection (A)(1).
3. In addition to the license renewal application form required under subsection (B)(2), the provisional licensee shall submit or have submitted on the licensee's behalf:
   a. If the answer to the item in subsection (A)(1)(i), (A)(1)(j), or (A)(1)(k) is yes, a copy of any relevant order;
   b. An affirmation of compliance with the continuing education requirement in R9-26-510 or, if subject to an audit under R9-26-511, documentation that demonstrates compliance with the continuing education requirement;
   c. The fee required under R9-26-508;
   d. If a Class B provisional licensee, letters that meet the standards at R9-26-505(B)(2)(a) and R9-26-505(B)(2)(b) or a letter that meets the standards at R9-26-505(B)(2)(c); and
   e. If a Class C provisional licensee, an affirmation that the licensee has provided and will continue to provide interpreting services only under direct supervision.
4. If a provisional licensee fails to comply with subsections (B)(2) and (B)(3) on or before the licensee's birthday, the license expires and the former licensee shall cease providing interpreting for which a license is required under A.R.S. § 36-1971. Unless the expired provisional license has previously been renewed under subsections (B)(2) and (B)(3), the former licensee may renew the expired license by complying with subsections (B)(2) and (B)(3), affirming that the former licensee did not provide interpreting for which a license is required under A.R.S. § 36-1971 after the license expired, and paying the penalty prescribed under R9-26-508 no later than 30 days after the license expired.
5. If an expired provisional license is not renewed under subsection (B)(4), the former licensee may obtain a license only by applying under R9-26-503 or R9-26-504.
6. A provisional interpreter license may be renewed a second time only if, in addition to complying with subsections (B)(2) and (B)(3), the licensee submits evidence to the Commission that the licensee attempted to pass the performance portion of a RID certification examination and intends to take the performance portion of a RID certification examination again within the next year.
7. The Commission shall not renew a provisional license more than two times. The Commission shall not issue more than one provisional license to an individual.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-508. Fees

A. Under the authority provided by A.R.S. §§ 36-1973(A) and 36-1974(C), the Commission establishes and shall collect the following fees, which are not refundable unless A.R.S. § 41-1077 applies:

1. Generalist or legal license application fee, $125;
2. Generalist or legal license renewal application fee, $50;
3. Provisional license application fee, $25;
4. Provisional license renewal application fee, $25
;
5. Penalty for late license renewal, $100; and
6. Duplicate license, $25.

B. Before the Commission issues an initial license to an applicant, the Commission shall collect from the applicant a pro-rated license renewal application fee, which will make the initial license valid until the applicant's second birthday following issuance of the initial license. The Commission shall pro-rate the license renewal application fee as follows:

1. Generalist or legal license renewal application fee: $5 for each month between issuance of the initial license and the applicant's first birthday following issuance of the initial license to a maximum of $50; and
2. Provisional license renewal application fee: $2.50 for each month between issuance of the initial license and the applicant's first birthday following issuance of the initial license to a maximum of $25.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-509. Procedures for Processing Applications; Time-frames

A. For the purpose of A.R.S. § 41-1073, the Commission establishes the following licensing time-frames:

1. Administrative completeness review time-frame: 30 days;
2. Substantive review time-frame: 60 days; and
3. Overall time-frame: 90 days.

B. The administrative completeness review time-frame listed in subsection (A)(1) begins on the date that the Commission receives a license application or license renewal application. During the administrative completeness review time-frame, the Commission shall

notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Commission shall specify in the notice what information is missing.

C. An applicant with an incomplete application shall supply the missing information within 30 days from the date of the notice. Both the administrative completeness review and overall time-frames are suspended from the date of the Commission's notice until the date that the Commission's office receives all missing information.

D. Upon receipt of all missing information, the Commission shall notify the applicant that the application is complete. The Commission shall not send a separate notice of completeness if the Commission grants or denies a license within the administrative completeness review time-frame in subsection (A)(1).

E. The substantive review time-frame listed in subsection (A)(2) begins on the date of the Commission's notice of administrative completeness or on expiration of the time listed in subsection (A)(1).

F. If the Commission determines during the substantive review time-frame that additional information is needed, the Commission shall send the applicant a comprehensive written request for the additional information. The applicant shall supply the additional information within 60 days from the date of the request. Both the substantive review and overall time-frames are suspended from the date on the Commission's request until the date that the Commission office receives the additional information.

G. If an applicant needs additional time in which to respond under subsection (C) or (F), the applicant shall submit a written notice of extension to the Commission before expiration of the time to respond that includes the date by which the applicant will submit the information. The applicant shall establish an extension date that is no more than 120 days from the date established under subsection (C) or (F).

H. If an applicant fails to submit information within the time provided under subsection (C) or (F) or as extended under subsection (G), the Commission shall close the applicant's file. An applicant whose file is closed and who later wishes to be licensed, shall apply anew.

I. Within the time listed in subsection (A)(3), the Commission shall:
1. Grant a license to an applicant who meets the requirements in A.R.S. § 36-1973 and this Article, or
2. Deny a license to an applicant who does not meet the requirements in A.R.S. § 36-1973 or this Article.

J. If the Commission denies a license, the Commission shall send the applicant a written notice explaining:
1. The reason for the denial with citations to supporting statutes or rules,
2. The applicant's right to appeal the denial and have a hearing,
3. The time for appealing the denial, and
4. The applicant's right to request an informal settlement conference.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-510. Continuing Education Requirement

A. Continuing education is required as a condition of licensure renewal. During each license year, a licensee shall complete the following hours of continuing education:
1. General interpreter, eight hours;
2. Legal interpreter, Class A or B, six hours, of which two hours are legal training;
3. Legal interpreter, Class C, six hours, of which three hours are legal training;
4. Legal interpreter, Class D, six hours, of which two hours are legal training; and
5. Provisional interpreter, 12 hours.

B. Between the time of initial licensure and a licensee's first birthday following initial licensure, the licensee shall complete a pro-rated amount of the continuing education required under subsection (A).

C. A licensee shall obtain from the provider of a continuing education attended by the licensee a certificate of attendance that includes:
1. Licensee's name and license number,
2. Name of the continuing education provider,
3. Name of the continuing education,
4. Number of hours of attendance, and
5. Date of the continuing education.

D. A licensee shall maintain the certificates of attendance described in subsection (C) for three years.

E. A licensee shall submit a copy of the certificates of attendance obtained during a license year if subject to an audit by the Commission under R9-26-511.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-511. Audit of Compliance with Continuing Education Requirement

At the time of license renewal, the Commission shall provide notice of an audit of continuing education records to a random sample of licensees. A licensee subject to a continuing education audit shall submit documentation that demonstrates compliance with the continuing education requirement at the same time the licensee submits the license renewal application form required under R9-26-507.

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Historical Note

Adopted effective April 4, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-512. Making a Complaint

A. A complaint may be filed by:
1. An individual for whom interpreting is provided,
2. A person having a direct or professional interest in the incident specified in the complaint, or
3. A person having reason to believe that interpreting was provided by an individual who is not licensed by the Commission and not exempt from licensure under A.R.S. § 36-1971(C).

B. Complaint requirements. A complainant shall:
1. Submit the complaint to the Commission in writing or by videotape. If a complaint is submitted by videotape, the Commission shall have the complaint interpreted and transcribed into English and forward the transcript to the complainant for review and approval;
2. Submit the complaint to the Commission within 90 days of the alleged offense; and
3. Specify in the complaint the name of the individual complained against, date and location of the alleged offense, the action complained about, and the statute or rule alleged to have been violated.

C. A complainant may withdraw a complaint at any time by providing notice to the Commission.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-513. Reserved

R9-26-514. Reserved

R9-26-515. Hearing Procedures

The Commission shall conduct all hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-516. Rehearing or Review of Commission Decision

A. The Commission shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

B. A party may amend a motion for rehearing or review at any time before the Commission rules on the motion.

C. The Commission may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings or an order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct by the Commission, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the 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. The Commission's decision is the result of passion or prejudice; or
8. The findings of fact or decision is not justified by the evidence or is contrary to law.

D. The Commission may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). The Commission shall specify the particular grounds for any order modifying a decision or granting a rehearing.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.

F. Not later than 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Commission may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Commission may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

G. If a rehearing is granted, the Commission shall hold the rehearing within 60 days after the date on the order granting the rehearing.

H. The Commission may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that an extension of time will:
1. Further administrative convenience, expedition, or economy; or
2. Avoid undue prejudice to any party.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-517. Disciplinary Action

After a hearing that results in a determination that a licensee violated A.R.S. Title 36, Chapter 17.1, or this Chapter, the Commission shall consider the following factors to determine the degree of discipline to impose under A.R.S. § 36-1976(A):

1. Prior conduct resulting in discipline;
2. Dishonest or self-serving motive;
3. Amount of experience as an interpreter;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Commission;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct;
7. Degree of harm resulting from the conduct; and
8. Whether harm resulting from the conduct was cured.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

R9-26-518. Change of Name or Address

The Commission shall communicate with a licensee or applicant using the name and address provided to the Commission by the licensee or applicant. To ensure timely receipt of communication from the Commission, a licensee or applicant shall notify the Commission of any change in the licensee's or applicant's name or address.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1720, effective May 1, 2007 (Supp. 07-2).

36-1941. Definitions

In this chapter, unless the context otherwise requires:

1. "Commission" means the commission for the deaf and the hard of hearing.
2. "Deaf" means those persons who cannot generally understand speech sounds with or without a hearing aid when in optimal listening conditions.
3. "Hard of hearing" means those persons who have a degree of hearing loss greater than 40dB PTA-2, but less than 85dB PTA-2, in the better ear.
4. "Interpreting" means translating or transliterating of English concepts to any necessary specialized vocabulary used by a consumer or the translating of a consumer specialized vocabulary to English concepts.
5. "Necessary specialized vocabulary" includes American sign language, English based sign language, cued speech and oral interpreting.
6. "PTA-2" means the average of hearing levels at one thousand, two thousand and four thousand Hz.

36-1942. Commission for the deaf and the hard of hearing

A. The commission for the deaf and the hard of hearing is established consisting of the following members appointed by the governor:

1. One member who is selected from the department of economic security.
2. One member who is selected from the Arizona state schools for the deaf and the blind at Tucson or the Phoenix day school for the deaf.
3. One member who is a dispensing clinical audiologist licensed pursuant to chapter 17 of this title.
4. One member who is a hearing aid dispenser licensed pursuant to chapter 17 of this title.
5. Four members who are deaf persons.
6. One member who is a licensed sign language interpreter.
7. One member who is a parent of a deaf person.
8. Four members who are hard of hearing.

B. Commission members serve three years and may be reappointed once. The governor may remove a commission member for cause.

C. The commission shall meet at least four times a year at the call of the chairman, who shall be selected by the commission from among its membership.

D. Members of the commission are not eligible to receive compensation but are eligible to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2.

36-1943. Executive director; duties

A. Subject to title 41, chapter 4, article 4, the commission shall appoint an executive director who serves at the pleasure of the commission. Subject to title 41, chapter 4, article 4, the commission may employ other employees as necessary, determine their compensation pursuant to section 38-611 and prescribe their powers and duties. With the approval of the commission, the executive director may contract for professional, technical and clerical services necessary to carry out functions of the commission.

B. The executive director shall be a trained professional experienced in problems of the deaf and the hard of hearing and skilled in the use of manual communication, commonly referred to as sign language, and may be either a deaf person, a person who is hard of hearing or a person with normal hearing. The executive director shall assist the commission to implement its programs and activities and to implement this chapter. The executive director shall not be a commission member. The executive director is eligible to receive compensation set by the commission within the range determined pursuant to section 38-611.

36-1944. Duties

The commission shall act as a bureau of information to the deaf and the hard of hearing, state agencies and institutions providing services to the deaf and the hard of hearing, local agencies of government and other public or private community agencies and programs. In this capacity, the commission shall:

1. Inform the deaf and the hard of hearing of the availability of the programs and activities of the commission and other services available for the deaf and the hard of hearing at all levels of government.
2. Develop and foster a framework for consultation and cooperation with the rehabilitation services bureau of the department of economic security and with all institutions represented on the commission.
3. Study issues relating to the deaf and the hard of hearing, review the administration and operation of the various programs for the deaf and the hard of hearing in this state and make recommendations concerning these problems and programs to the several agencies and institutions represented on the commission as it deems necessary.
4. Submit an annual report to the governor and the legislature concerning its findings and recommendations.
5. Review the problems of the deaf and the hard of hearing as they relate to the need for effective and appropriate auxiliary aids in public places.
6. Review and compile information on the development of acoustical technology for the hard of hearing and advocate the use of this technology if it deems appropriate.
7. Make recommendations to state agencies, political subdivisions and institutions on how to meet the needs of the hard of hearing.
8. Make recommendations to the legislature regarding statutory changes needed to implement a statewide newborn child hearing loss screening program.

36-1945. Commission for the deaf and the hard of hearing fund; gifts and donations; annual report

A. The commission for the deaf and the hard of hearing fund is established consisting of fees, penalties and any legislative appropriations. The commission shall administer the fund. Monies in the fund are subject to legislative appropriation.

B. The commission may accept and spend federal monies and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of a fiscal year.

C. The commission shall submit an annual report to the governor on all monies accepted by the commission pursuant to subsection B, the names of the donors and the respective amounts contributed and the amount of all disbursements from the fund.

36-1946. Interpreters for the deaf and the hard of hearing; certification; licensure
The commission shall:
1. Adopt rules necessary to achieve the purposes of section 12-242.
2. By rule, classify interpreters for the deaf and the hard of hearing based on the level of interpreting skills acquired by that person.
3. By rule, establish standards and procedures for the qualification and licensure of each classification of interpreters.
4. Help establish partnerships with colleges and universities in this state to provide interpreter and support service provider training and degree programs.
5. By rule, establish standards and procedures to certify sign language teachers to teach American sign language.
6. Beginning on September 1, 2007, license interpreters for the deaf and the hard of hearing pursuant to article 2 of this chapter.

36-1947. Telecommunication devices for the deaf and the hearing and speech impaired; fund
A. The commission shall establish and administer a statewide program to purchase, repair and distribute telecommunication devices to residents of this state who are deaf or severely hearing or speech impaired and establish a dual party relay system making all phases of public telephone service available to persons who are deaf or severely hearing or speech impaired.
B. The commission may adopt administrative procedures, rules, criteria and forms to establish and administer the telecommunication device program under this section.
C. Telecommunication devices furnished by the commission under this section remain the property of this state. A person who receives a telecommunication device from the commission under this section is liable for the loss of or damage to the device. The commission may impose a civil penalty against the person in an amount equal to the cost of the device or the amount of damage done to the device. If a person objects to the imposition of a civil penalty, the commission shall conduct a hearing as prescribed in title 41, chapter 6, article 10. Monies collected by the commission under this subsection shall be deposited in the telecommunication fund for the deaf established by subsection D of this section.
D. The telecommunication fund for the deaf is established. The commission shall administer the fund. Monies in the fund shall be derived from the telecommunication services excise tax revenues distributed pursuant to section 42-5252, subsection B. Interest accruing to the fund shall be deposited in the fund. Monies in the fund are exempt from section 35-190 relating to lapsing of appropriations. Subject to legislative appropriation, the commission shall use fund monies to purchase and repair telecommunication devices, to administer the program established by this section and for the operating costs of the commission.

36-1971. Licensure; acts and persons not affected

A. A person shall not practice as an interpreter for the deaf and the hard of hearing without a license issued pursuant to this article. The licensure requirements of this article also apply to interpreters who provide services for legal proceedings as prescribed in section 12-242.

B. The commission by rule shall prescribe education, examination and work history requirements for the following three categories of licenses:

1. Legal.
2. Generalist.
3. Provisional.

C. This article does not apply to:

1. An interpreter who works in this state for less than twenty days if that person registers with the commission to provide interpreting services in nonlegal situations.
2. An interpreter who provides interpreting services at religious activities.
3. An interpreter who provides interpreting services on an emergency basis if the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer.
4. An interpreter who works without compensation in nonlegal situations.
5. An interpreter who works in a school in this state pursuant to the individual education plan of a deaf or hard of hearing pupil. The qualifications of an interpreter working in a school in this state shall be determined by the individualized education program team. A school district shall inform a parent or guardian of a deaf or hard of hearing pupil of the parent or guardian's right to request a licensed interpreter.
6. Activities and services of an interpreter intern or student in training if both of the following are true:

(a) The interpreter is enrolled in a program of study in interpreting at an accredited institution of higher learning.

(b) The interpreter works under the supervision of a person licensed pursuant to this article as part of a supervised program of study and is identified to all consumers as an interpreter intern or student in training.

36-1972. Use of title; prohibited acts; violation; classification

A. A person who is not licensed pursuant to this article shall not:

1. Use any title, abbreviation, words, letters, signs or figures to indicate that the person is licensed pursuant to this chapter.
2. Practice as an interpreter for the deaf and the hard of hearing.
3. Use another person's license.

B. A person who violates this section is guilty of a class 2 misdemeanor.

36-1973. Qualifications for licensure

A. To receive a license to practice as an interpreter pursuant to this article a person shall submit an application and application fee as prescribed by the commission.

B. The applicant shall document to the commission's satisfaction that the applicant has successfully completed the education, examination and work history requirements for the specific category of license for which the licensee is applying.

36-1974. Issuance and renewal of license; continuing education

A. The executive director shall issue a license if the applicant has satisfied all of the requirements for licensure under this article.

B. A license issued pursuant to this article is subject to renewal one year after the date it was issued and terminates thirty days after the renewal date unless it is renewed.

C. Each licensee shall renew the license not earlier than sixty days before and not later than thirty days after the license expires by submitting the renewal fee and a completed renewal form. A licensee who does not renew a license as required by this article must also pay a penalty fee as prescribed by the commission for late renewal. A person who practices interpreting in this state after that person's license has expired is in violation of this article.

D. A person whose license terminates shall submit an application and application fee as an original applicant for licensure.

E. The commission by rule may prescribe continuing education requirements as a condition of license renewal.

36-1975. Denial of licensure

The commission may refuse to issue or renew a license if the commission finds that any of the following is true:

1. The applicant committed fraud or misrepresentation in applying for a license in this state or another state.
2. The applicant was convicted of a felony offense or any other offense involving moral turpitude.
3. The applicant does not meet minimum qualifications as prescribed by this article.
4. The applicant was adjudicated insane or incompetent.
5. The applicant engaged in fraud, dishonesty or corruption on a certification examination in another state.

36-1976. Revocation or suspension of license

A. The commission may revoke or suspend a license issued under this article, place a licensee on probation, issue a reprimand or impose a civil penalty for any of the following reasons:

1. Unprofessional conduct.
2. A violation of this article.
3. Gross negligence or incompetence in the performance of duties.
4. Fraud, dishonesty or corruption.
5. Inability to perform the duties of an interpreter at a level of skill that is required by the commission.
6. Conviction of a felony offense or any other offense involving moral turpitude.
7. Failing to meet minimum qualifications as prescribed by this article.
8. Adjudication of insanity or incompetency.

B. Before it takes disciplinary action pursuant to this section, the commission shall give a licensee notice and an opportunity for a hearing pursuant to its rules.

C. The commission may issue subpoenas, examine witnesses and administer oaths pursuant to a hearing held under this section.

36-1977. Right to examine and copy evidence
In connection with a commission investigation conducted pursuant to section 36-1976, the commission at all reasonable times has the right to examine and copy any documents, reports, records or other physical evidence of any person being investigated or reports, records and any other documents maintained by and in the possession of any public or private agency if the commission believes this information is related to unprofessional conduct or the mental or physical ability of a licensee to practice pursuant to this article.

36-1978. Injunctive relief; bond; service of process
A. In addition to all other available remedies, if the commission has any reason to believe that a person has violated this article or a commission rule, the commission through the attorney general or the county attorney of the county in which the violation is alleged to have occurred may apply to the superior court in that county for an injunction restraining that person from engaging in the violation.
B. The court shall issue a temporary restraining order, a preliminary injunction or a permanent injunction without requiring the commission to post a bond.
C. Service of process may be on the defendant in any county of this state where the defendant is found.

12-242. Interpreters for deaf persons; proceedings; definitions
A. The court shall in any civil or criminal case or grand jury proceeding in which a deaf person is party to such action, either as a witness, complainant, defendant or attorney, appoint a qualified interpreter to interpret the proceedings to the deaf person, to interpret the deaf person's testimony or statements and to interpret preparations with the deaf person's attorney.
B. A department, board, commission, agency or licensing authority of this state or a political subdivision of this state shall, in any proceeding before such department, board, commission, agency or licensing authority in which a deaf person is a principal party of interest or witness, appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret the deaf person's testimony or statements.
C. If a person known or ascertained to be deaf is arrested and taken into custody for any alleged violation of a criminal law of this state, the arresting officer, the officer's superiors or the court shall procure a qualified interpreter in order to properly interpret any of the following:
1. Warnings of the person's constitutional privilege against self-incrimination as it relates to custodial interrogation.
2. Interrogation of the deaf person.
3. The deaf person's statements.
D. If a juvenile whose parent or parents are deaf is brought before a court for any reason, the court shall appoint a qualified interpreter to interpret the proceedings

and testimony for the deaf parent or parents and to interpret any statements or testimony the deaf parent or parents may be called upon to give to the court.
E. If a communication made by a deaf person through an interpreter is privileged, the privilege extends also to the interpreter.
F. If the interpreter or the deaf person determines that effective communication is not occurring the court or appointing authority shall permit the interpreter or the deaf person to nominate a qualified intermediary interpreter to provide interpreting services between the deaf person and the appointed interpreter during proceedings.
G. A deaf person entitled to the services of an interpreter under this section may knowingly and intelligently waive these services. A deaf person who has waived an interpreter under this subsection may provide an interpreter at the deaf person's own expense.
H. As used in this section:
1. "Deaf person" means a person whose hearing impairment is so significant that the individual is impaired in processing linguistic information through hearing.
2. "Qualified interpreter" means a person who has a valid license of competency authorized by the commission for the deaf and the hard of hearing.

F-1

ARIZONA DEPARTMENT OF LIQUOR LICENSES AND CONTROL (F-16-0401)

Title 19, Chapter 1, Article 1, Provisions; Article 2, Licensing; Article 3, Licensee Responsibilities; Article 4, Required Notices to Department; Article 5, Required Records and Reports; Article 6, Violations, Hearings, Discipline; Article 7, State Liquor Board

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-1**

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

FROM: Chris Kleminich, Staff Attorney

DATE: May 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF LIQUOR LICENSES AND CONTROL (F-16-0401)**
Title 19, Chapter 1, Article 1, General Provisions; Article 2, Licensing; Article 3, Licensee Responsibilities; Article 4, Required Notices to Department; Article 5, Required Records and Reports; Article 6, Violations, Hearings, Discipline; Article 7, State Liquor Board

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Liquor Licenses and Control (Department) is "to regulate and license the manufacture and sale of liquor in this state." Laws 2010, Ch. 224, § 5. The Department consists of the seven-member State Liquor Board (Board) and the Director of the Department. See A.R.S. § 4-111.

This five-year review report covers 63 rules in A.A.C. Title 19, Chapter 1.

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

Article 1 contains eight rules that address general provisions, related to definitions; fees and surcharges, service charges; A.R.S. Title 4 Training Course: minimum standards; shipping container labeling, shipping requirements; standards for a non-contiguous area of a licensed premises; severability; electronic signatures; and sign limitations.

Article 2 contains nine rules that address licensing, related to who may apply for a license; applications required; registration of retail agents; obtaining a quota license; requirements for a special event license; criteria for issuing a restaurant license; extension of premises; notice of application for a conveyance license; and licensing time-frames.

Article 3 contains 24 rules that address licensee responsibilities, related to knowledge of liquor law, responsibility; authorized spirituous liquor; storing spirituous liquor on unlicensed

premises; paying taxes required; bottle labeling requirements; bottle reuse or refilling prohibited; age requirement for erotic entertainers; prohibited acts; prohibited films and pictures; accurate labeling of dispensing equipment required; prohibited inducement to purchase or consume spirituous liquor; responsibilities of a licensee that operates a delivery service; responsibilities of a liquor store or beer and wine store licensee; responsibilities of a hotel-motel or restaurant licensee; responsibilities of a special event licensee; commercial coercion or bribery prohibited; practices permitted by a producer or wholesaler; practices permitted by a wholesaler; responsibilities of a registered retail agent; underage individuals on licensed premises; standards for exemption of an unlicensed business; display of warning sign regarding consumption of alcohol, posting notice regarding firearms; tapping equipment; and domestic farm winery sampling.

Article 4 contains eight rules that address required notices to Department, related to notice of license surrender or application withdrawal; registered retail agent: notice of change in cooperative-purchase agreement, list of cooperative members; hotel-motel or restaurant licensee: notice of change to restaurant facility; notice of sampling on a licensed off-sale retail premises; notice of change in status: active or nonuse; notice of change in manager; notice of legal or equitable interest; and notice of change in business name, address, or telephone number.

Article 5 contains five rules that address required records and reports, related to general recordkeeping; on-sale retail personnel records; records regarding cooperative purchases; record of delivery of spirituous liquor; and reports of acts of violence.

Article 6 contains four rules that address violations, hearings, and discipline, related to appeals and hearings; actions during license suspension; seizure of spirituous liquor; and closures due to violence.

Article 7 contains five rules that address the State Liquor Board, related to election of officers; determining whether to grant a license for a certain location; rehearing or review of decisions; submitting documents to the Board; and judicial review.

Year that Each Rule was Last Amended or Newly Made

- July 6, 2014: Sections 302, 320, 321, 324
- July 6, 2013: Sections 101, 102, 103, 104, 105, 106, 107, 110, 201, 202, 203, 204, 205, 206, 207, 208, 209, 303, 304, 305, 306, 307, 308, 309, 310, 312, 314, 315, 316, 317, 318, 319, 322, 323, 325, 326, 327, 401, 402, 403, 404, 405, 406, 407, 408, 501, 502, 503, 504, 505, 601, 602, 603, 604, 701, 702, 703, 704, 705

Proposed Action

The Department indicates that it intends to seek an exception to Executive Order 2016-03. Pending receipt of that exception, the Department intends to submit a rulemaking to the Council by June 30, 2017 to amend Sections 101, 102, 104, 105, 202, 205, 207, 305, 315, 320, 327, 504, 603, 704, and 705.

Summary of Reasons for the Proposed Action

The Department indicates that the rules need to be amended to improve consistency with statutes, and to make the rules more clear, concise, and understandable.

Substantive or Procedural Concerns

None.

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

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

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

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

Yes. The Department indicates that, to the extent the rules are consistent with statute, the rules effectively meet their objectives.

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

Yes. The Department indicates that an e-mail dated August 28, 2015 from Mr. Peter Schelstraete indicates that use of the phrase "complaint for judicial review" in Section 705 is inconsistent with the statutory phrase "notice of appeal" used in A.R.S. § 12-904. The Department intends to amend the rule to use the correct phrasing.

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

Yes. The Department cites to A.R.S. § 4-112(A)(2) and (B) as general authority for the rules. Under A.R.S. § 4-112(A)(2), the Board shall "[a]dopt rules in order to carry out the provisions of this section [Title 4, Alcoholic Beverages]." Specific statutory authority is listed in the report for each rule.

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

Yes. The Department indicates recent statutory changes have resulted in inconsistencies between the Department's governing statutes and its rules.

- Under A.R.S. § 4-244(32)(c), a container into which a licensee dispenses beer for consumption off-sale no longer has to be made of glass. As a result, R19-1-101(2)(c), (3)(c), and (4)(b) require amendment.

- Statutes regarding farm wineries and microbreweries have been amended to delete the word "domestic." As a result, R19-1-101, R19-1-104, R19-1-315, R19-1-327, and R19-1-504 require amendment.
- A.R.S. § 4-209 has been amended to refer to a "limited out-of-state producer license" instead of a "limited out-of-state winery license", and the amount of wine authorized for production by a licensee has been changed to 240 gallons. As a result, R19-1-101(26) requires amendment.
- R19-1-102 requires amendment, as the legislature has removed the Department's authority to charge for a restaurant continuation authorization.
- Dates previously specified in A.R.S. §§ 4-205.02(G), 4-207.01 (B), 4-206.01(J), and 4-244.05(J)(4) have been deleted. As a result, R19-1-102(G)-(J) require amendment.
- A.R.S. § 4-205.08, regarding microbreweries, has been amended, and A.R.S. § 4-205.10, regarding craft distillers, has been newly made. Microbreweries and craft distillers can now ship spirituous liquor to a retail licensee. As a result, R19-1-104 requires amendment.
- Amendments to A.R.S. § 4-205.08 that have increased the maximum amount of beer a microbrewery may produce, and to allow manufacturing as well as producing, require R19-1-101(16) to be amended.
- Because of legislative changes regarding microbreweries and craft distillers, amendments are needed to R19-1-305, R19-1-315, and R19-1-504.
- Internal cross references to A.R.S. § 4-101 need to be amended in R19-1-105(B) and R19-1-207.
- Amendments to A.R.S. § 4-243(B)(3)(c), regarding a wholesaler or producer providing samples of spirituous liquor on an off-sale retailer's premises, require amendments to R19-1-320(M).
- The legislature has created three new licenses that need to be addressed in the rules: a craft distillery license, a craft distiller festival and fair license, and a custom crush license.
- The legislature has added statutory provisions requiring Department approval of remote tasting rooms for a licensed craft distillery or farm winery.
- A.R.S. § 4-221 requires a person possessing or having custody of a still or distilling apparatus to register with the Director. The Department intends to create a new rule providing information about the procedure for registering.
- A.R.S. § 4-203.02 authorizes the Director to issue special event licenses. R19-1-205(B) and (C) require amendment to ensure consistency with statute.

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

Yes. The Department indicates that, except for areas where the rules are inconsistent with statutes, the rules are enforced as written.

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

Yes. The Department indicates that the rules are generally clear, concise, and understandable. In an upcoming rulemaking, the Department intends to amend some of the rules in order to improve consistency with statutory terminology that has recently been changed.

8. Stringency of the Rules:

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

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

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

Not applicable.

9. For rules adopted after July 29, 2010:

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

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

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

Yes. The Department indicates that all of the licenses defined in Section 101, as well as other authorizations and registrations required under A.R.S. Title 4, comply with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

Yes. The Department indicates that rulemakings in 2013 and 2014 fulfilled the proposed course of action identified in the 2011 five-year-review report.

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

Yes. As described above, the Department intends to submit a rulemaking to the Council by June 30, 2017 to amend Sections 101, 102, 104, 105, 202, 205, 207, 305, 315, 320, 327, 504, 603, 704, and 705.

Conclusion

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

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-1**

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

FROM: GRRC Economic Team

DATE: May 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF LIQUOR LICENSES AND CONTROL (F-16-0401)**
Title 19, Chapter 1, Article 1, General Provisions; Article 2, Licensing; Article 3, Licensee Responsibilities; Article 4, Required Notices to Department; Article 5, Required Records and Reports; Article 6, Violations, Hearings, Discipline; Article 7, State Liquor Board

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

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

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules.

The rules regulate the liquor industry through license control process, collection of fees and taxes, and enforce statutes to maintain the health and welfare of the community.

At the end of FY 2015, the Department had 12,066 active licensees. The Department issues 23 different kinds of licenses. Restaurants, bars, and liquor stores account for approximately 77 percent of the Department's licensees.

<u>Active Licenses on June 30</u>:

FY 2011	11,832
FY 2012	11,619
FY 2013	11,930
FY 2014	11,939
FY 2015	12,066

In FY 2015, the Department issued 4,888 new licenses, including special event permits and interim permits. Twenty-two of the applications were for quota licenses. A total of eight new quota licenses were issued through a random-selection process. A successful applicant for a

quota license pays the fair-market value for the license, which varies by geographic region. As an example, the fair-market value in 2015 for a bar license was $71,500 in Maricopa County, $27,650 in Pima County, and $57,900 in Yuma County. Out-of-state licensees have decreased from 1,884, or 15.8% of total active licenses in FY 2014 to 1,874, or 15.5% of total active licenses in FY 2015.

In FY 2015, the Department collected a total of $7,891,790 in revenue from $7,246,392 in fees, $107,700 in penalty fees for late renewal, and $472,490 in fines for law violations. The Department also collected $65,208 in fingerprint fees. For FY 2015, the Department, which is an appropriated self-funded agency, was appropriated $2,962,500 (38% of that collected) and received $1,012,228 in collected surcharges and fingerprint fees (13% of that collected). Under A.R.S. § 4-115 monies collected but not appropriated are deposited in the general fund. In 2015, this amounted to $3,362,334 (42% of that collected). A.R.S. § 4-115 also provides that a portion of the funds collected from a county be returned to the county. In 2015, $554,728 (seven percent of that collected) was returned to the counties and other state agencies.

Total Revenue Collected:

FY 2011	$8,828,882
FY 2012	$6,059,310
FY 2013	$6,536,518
FY 2014	$6,442,381
FY 2015	$7,891,790

Since the last rulemaking took effect on July 6, 2013, the Department repealed rules that existed and made new ones. Since 2013, the Department's statutes have been amended six times. The Department indicated it expected the changes to have minimal economic impact.

The Department believes the economic impact has been as predicted for the rules in Article 1.

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

The Department has determined that the rules in Article impose the least burden and costs to the regulated community. However, the Department proposes several amendments to correct inconsistencies between the statutes and rules.

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

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

4. Conclusion

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

RECEIVED
JAN 22 2016
GRRC

STATE OF ARIZONA
DEPARTMENT OF LIQUOR LICENSES AND CONTROL

Douglas A. Ducey
GOVERNOR

John Cocca
DIRECTOR

January 22, 2016

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

RE: Five-year-review Report on 19 A.A.C. 1, Articles 1 through 7

Dear Ms. Ong:

As required by A.R.S. § 41-1056, the Department of Liquor Licenses and Control submits for your approval a report on a review of its rules. The Department reviewed all the referenced rules.

As required under A.R.S. § 41-1056(A), the Department certifies that it is in compliance with A.R.S. § 41-1091 regarding a substantive policy directory.

If you have questions regarding this report, please contact Pearlette J. Ramos at (602) 542-9021. Thank you for your consideration.

Sincerely,

John Cocca
Director

Enclosure:

800 WEST WASHINGTON, 5th FLOOR PHOENIX, ARIZONA 85007-2934 PHONE (602) 542-5141 FAX (602) 542-5707

WWW.AZLIQUOR.GOV

Individuals requiring special accommodations please call (602)542-9051

DEPARTMENT OF LIQUOR LICENSES AND CONTROL

5YRR
19 A.A.C. 1, Articles 1 through 7

Submitted January 2016
Approved June 2016

INTRODUCTION

The Department of Liquor Licenses and Control, which is created by A.R.S. § 4-111, consists of the State Liquor Board and the Office of the Director of the Department. The Board is responsible for granting or denying licenses and holding hearings regarding appeals. The Director is responsible for administering the statutory provisions regarding liquor licenses and control. The legislature created the Department to regulate the liquor industry through the license control process, collect fees and taxes for the maintenance of government, and enforce statutes to maintain the health and welfare of the community. The mission of the Department is to protect public safety, support economic growth through the responsible sale and consumption of liquor, and license qualified applicants efficiently.

Arizona, like most states, has a three-tiered system for the distribution of spirituous liquors. The three tiers, which have been in effect since the repeal of prohibition, include producers, wholesalers (distributors), and retailers. The basic structure of the three-tiered system is that producers can sell only to wholesalers who call sell only to retailers. Retailers sell to customers.

The sale of spirituous liquor is highly regulated at both the state and federal levels. Production and sale of spirituous liquor is a multi-billion dollar industry that employs thousands and provides millions in tax revenue. There are some complaints that the three-tiered system is antiquated and not consistent with today's global markets, international producers, and the explosion of craft producers that seek to sell directly to their customers. In spite of marketplace changes, the industry has potential for public harm and continued regulation is needed. Over-service, under-age drinking, and potential corruption within the regulated industry harm public health and safety and make the three-tiered system necessary. The Department balances competing interests in the industry to minimize negative impacts.

In a rulemaking that took effect on July 6, 2013, the Department repealed rules that existed at that time and made new ones. In a second rulemaking that took effect on July 6, 2014, the Department made five additional rules. Since 2013, the Department's statutes have been amended six times (See Laws 2013, Chapter 207; Laws 2013, Chapter 47; Laws 2013, Chapter 1345; Laws 2014, Chapter 253; Laws 2015, Chapter 112; and Laws 2015, Chapter 131).

Laws 2013, Chapter 207, was enacted to comply with federal law requiring states that receive funds for Temporary Assistance for Needy Families to prevent the funds from being used in an electronic benefit

transfer transaction at a liquor store. Statute requires the Department to ensure that licensed liquor stores disable the ability of terminals on the licensed premises to accept a TANF EBT card or process a TANF EBT card transaction.

Laws 2013, Chapter 47, authorized the director to issue a domestic microbrewery license on the same parcel of land as a domestic farm winery.

Laws 2013, Chapter 1345, amended the definition of "dangerous drug" as it applies to unlawful acts by a liquor licensee to conform to the definition used in the criminal code.

Laws 2014, Chapter 253 was an omnibus law that made numerous changes to A.R.S. Title 4. The more significant changes include:

- Removed the word "domestic" as an adjective of "farm winery" and "microbrewery;"
- Created three new licenses: craft distiller license and craft distillery festival and fair licenses;
- Made changes to requirements for a special event license;
- Increased the number of wine festival licenses and the number of days of wine festival per licensed farm winery and increased the fee for a wine festival or fair license;
- Added state agencies to the list of government entities to which a government license may be issued;
- Established new grounds for suspending, revoking, or refusing to issue a license;
- Clarified that a wholesaler may employ channel pricing;
- Strengthened regulation of direct shipment licensees;
- Authorized farm winery licensees to enter into custom crush arrangements;
- Authorized alternating proprietorships; and
- Authorized remote tasting rooms for farm wineries.

Laws 2015, Chapter 112 created a new Section, A.R.S. § 4-214, regarding the information a licensed farm winery may put on a label to indicate the origin of the wine.

Laws 2015, Chapter 131 made changes regarding microbreweries including increasing the annual production limit per location to 6,200,000 gallons from 1,240,000 gallons.

<u>Statute that generally authorizes the agency to make rules:</u> A.R.S. § 4-112(A)(2) and (B)

1. Specific statute authorizing the rule:

R19-1-101: A.R.S. § 4-112(B)(1)(a)

R19-1-102: A.R.S. §§ 4-112(G)(10), 4-205.02, 4-206.01, 4-207.01(B), 4-209, 4-244.05, and 35-142(K)

R19-1-103: A.R.S. § 4-112(G)(2)

R19-1-104: A.R.S. § 4-112(B)(1)(a)

R19-1-105: A.R.S. § 4-101(27)

R19-1-106: A.R.S. § 4-112(B)(1)(b)

R19-1-107: A.R.S. § 4-112(G)(11)

R19-1-110: A.R.S. §§ 4-112(G)(4) and 4-243(A)(4)

R19-1-201: A.R.S. §§ 4-202(A) and 41-1080

R19-1-202: A.R.S. §§ 4-201, 4-202, 4-203, 4-203.01, 4-203.04, and 4-228

R19-1-203: A.R.S. §§ 4-112(B)(1)(d) and 4-222

R19-1-204: A.R.S. §§ 4-206.01

R19-1-205: A.R.S. § 4-203.02

R19-1-206: A.R.S. § 4-205.02(E)

R19-1-207: A.R.S. §§ 4-101(27) and 4-203(B)

R19-1-208: A.R.S. § 4-201(B)

R19-1-209: A.R.S. §§ 41-1073, 4-101(9), 4-201(E), and 4-202(B)

R19-1-302: A.R.S. § 4-112(G)(4)

R19-1-303: A.R.S. § 4-203(B)(1)

R19-1-304: A.R.S. § 4-203(B)

R19-1-305: A.R.S. §§ 4-112(B)(1)(c), 4-205.04(I)(1), 4-205.08(H)(1), 4-205.10(F)(1), and 4-210(A)(5)

R19-1-306: A.R.S. § 4-112(B)(1)(a)

R19-1-307: A.R.S. § 4-244(21), (32), and (45)

R19-1-308: A.R.S. § 4-112(G)(6)

R19-1-309: A.R.S. § 4-112(B)(1)(b)

R19-1-310: A.R.S. § 4-112(B)(1)(b)

R19-1-312: A.R.S. § 4-243

R19-1-314: A.R.S. § 4-112(B)(1)(b)

R19-1-315: A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), and 4-205.04(C)(9) and (D)

R19-1-316: A.R.S. § 4-244(19)

R19-1-317: A.R.S. §§ 4-205.01 and 4-205.02

R19-1-318: A.R.S. §§ 4-112(B)(1)(b) and 4-203.02(E)

R19-1-319: A.R.S. § 4-243(A)

R19-1-320: A.R.S. §§ 4-242, 4-243, and 4-244(3)

R19-1-321: A.R.S. §§ 4-203.02(G) – (N) and 4-243

R19-1-322: A.R.S. § 4-222

R19-1-323: A.R.S. §§ 4-210(M) and 4-244(22)

R19-1-324: A.R.S. § 4-244.05

R19-1-325: A.R.S. §§ 4-229, 4-261, and 4-262

R19-1-326: A.R.S. § 4-243(A)(4)

R19-1-327: A.R.S. § 4-244.04

R19-1-401: A.R.S. §§ 4-203, 4-203.01, 4-205.02, and 4-210(I)

R19-1-402: A.R.S. § 4-222

R19-1-403: A.R.S. § 4-205.02(F)

R19-1-404: A.R.S. §§ 4-243(B)(3)(b) and 4-244.04

R19-1-405: A.R.S. § 4-203

R19-1-406: A.R.S. § 4-202(C)

R19-1-407: A.R.S. §4-112(B)(3)

R19-1-408: A.R.S. § 4-112(B)(1)(a)

R19-1-501: A.R.S. §§ 4-210(A)(7), 4-119, and 4-241(K)

R19-1-502: A.R.S. § 4-119

R19-1-503: A.R.S. § 4-222

R19-1-504: A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(H) and (J), 4-205.04(C)(9) and (H), and 4-205.10(C)(7) and (E)

R19-1-505: A.R.S. § 4-244(37)

R19-1-601: A.R.S. § 4-210(H)

R19-1-602: A.R.S. § 4-244(I)

R19-1-603: A.R.S. §§ 4-244 and 4-244.05(F)

R19-1-604: A.R.S. § 4-210

R19-1-701: A.R.S. § 4-111(C)

R19-1-702: A.R.S. § 4-201(I)

R19-1-703: A.R.S. §§ 4-210.02 and 41-1092.09

R19-1-704: A.R.S. §§ 4-112(A)(2) and 4-201(E)

R19-1-705: A.R.S. §§ 4-211 and 12-901 et seq.

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

R19-1-101: 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. The definitions are designed to facilitate understanding by those who use the rules.

R19-1-102: Fees and Surcharges; Service Charges. The objective of the rule is to inform applicants of the licensing fees, surcharges, and service charges authorized by statute and collected by the Department. This increases efficiency in the licensing process by enabling an applicant to anticipate the expense of obtaining a license.

R19-1-103: A.R.S. Title 4 Training Course: Minimum Standards. The objective of the rule is to establish minimum standards for various training courses regarding A.R.S. Title 4. This increases efficiency in the approval process by enabling training providers to design courses that meet the standards and can be approved by the Department.

R19-1-104: Shipping Container Labeling; Shipping Requirements. The objective of the rule is to establish requirements regarding shipping or transporting spirituous liquor into or within the state designed to ensure there is a chain of custody of the spirituous liquor. This protects public health and safety.

R19-1-105: Standards for Non-contiguous Area of a Licensed Premise. The objective of the rule is to establish standards for approving inclusion of a non-contiguous area in a licensed premise. This increases efficiency in the licensing process by enabling an applicant to anticipate whether a proposed non-contiguous area will be approved.

R19-1-106: Severability. The objective of the rule is to state the principle that each rule provision is separate from the others and can be applied separately. This ensures an invalid provision does not impair the Department's ability to carry out the provisions of A.R.S. Title 4.

R19-1-107: Electronic Signatures. The objective of the rule is to indicate the Department may accept all required communications electronically. This increases efficiency in the Department's ability to fulfill its licensing and regulatory responsibilities.

R19-1-110: Sign Limitations. The objective of the rule is to establish limits on the signs a producer or wholesaler of spirituous liquor may lend to a retailer. The rule is to prevent commercial coercion or bribery by a producer or wholesaler.

R19-1-201: Who May Apply for a License. The objective of the rule is to clearly specify the pre-requisites for licensure. This increases efficiency in the licensing process by enabling an individual or entity to anticipate whether the pre-requisites for licensure are met.

R19-1-202: Application Required. The objective of the rule is to specify that obtaining a license or other approval from the Department requires that application be made. This increases efficiency in the licensing process.

R19-1-203: Registration of a Retail Agent. The objective of the rule is to establish pre-requisites for being a retail agent and the requirements for registering with the Department. This increases efficiency in the registration process and enables retail licensees to enjoy the efficiencies of cooperative purchasing.

R19-1-204: Obtaining a Quota License. The objective of the rule is to indicate the manner in which the Department will choose among persons interested in obtaining a quota license. The random procedure provides fairness and increases efficiency in the licensing process.

R19-1-205: Requirements for a Special Event License. The objective of the rule is to indicate how application for a special event license is to be made and establish a limit on the number of special event licenses that will be issued annually to an entity.

R19-1-206: Criteria for Issuing a Restaurant License. The objective of the rule is to establish criteria the Department uses to determine whether there is sufficient evidence of an ability to operate a restaurant. This increases efficiency in the licensing process by encouraging only qualified entities to make application.

R19-1-207: Extension of Premises. The objective of the rule is to emphasize that spirituous liquor may be served only on a licensed premises and that an application is required to extend a previously licensed premise. This protects public health and safety by controlling the locations at which spirituous liquor is served.

R19-1-208: Notice of Application for a Conveyance License. The objective of the rule is to ensure that those who apply for a conveyance license know notice is required to be posted at the applicant's principal place of business. This protects public health and safety by ensuring interested parties have notice that application for a license has been made.

R19-1-209: Licensing Time-frames. The objective of this rule is to specify time frames within which the Department will act on a license or other approval application. This enables an applicant to anticipate when the Department approval process will be completed.

R19-1-302: Knowledge of Law. The objective of this rule is to specify the individuals required to have knowledge of A.R.S. Title 4, and related rules. This protects public health and safety by ensuring there is always someone on a licensed premise aware of the law regarding spirituous liquor.

R19-1-303: Authorized Spirituous Liquor. The objective of this rule is to emphasize that a license authorizes the licensee to manufacture, sell, or deal in only the spirituous liquor

specified on the license. This protects public health and safety by controlling the availability of spirituous liquor.

R19-1-304: Storing Spirituous Liquor on Unlicensed Premises. The objective of this rule is to state the general principle that spirituous liquor may be stored on only licensed premises and to provide a procedure for obtaining authorization to store spirituous liquor on unlicensed premises. This protects public health and safety by ensuring that spirituous liquor is safeguarded from possible misuse.

R19-1-305: Paying Taxes Required. The objective of the rule is to provide notice that all taxes must be paid before a quota license may be transferred. This protects the state's taxpayers by ensuring licensees pay their share of taxes.

R19-1-306: Bottle Labeling Requirements. The objective of the rule is to require licensees to comply with federal law regarding bottle labeling. This protects public health and safety by ensuring a consumer knows what is being purchased or consumed.

R19-1-307: Bottle Reuse or Refilling Prohibited. The objective of the rule is to indicate that a bottle may not be reused for packaging spirituous liquor, the label on a bottle may not be altered, and the spirituous liquor in a bottle may not be adulterated. This protects public health and safety by ensuring a consumer purchases and consumes the spirituous liquor intended.

R19-1-308: Age Requirement for Erotic Entertainers. The objective of the rule is to establish a minimum age requirement for erotic entertainers who perform on licensed premises. This protects minors who are on premises on which spirituous liquor is sold and consumed.

R19-1-309: Prohibited Acts. The objective of the rule is to define a clear limit to behavior that is prohibited on licensed premises. This protects public health and safety by not exposing the public to conduct that violates public norms.

R19-1-310: Prohibited Films and Pictures. The objective of the rule is to define a clear limit regarding the nature of films and pictures that are prohibited on licensed premises. This protects public health and safety by not exposing the public to material that violates public norms.

R19-1-312: Accurate Labeling of Dispensing Equipment Required. The objective of the rule is to require that dispensing equipment be accurately labeled regarding the spirituous liquor dispensed. This protects the public from possible fraud regarding the spirituous liquor purchased.

R19-1-314: Prohibited Inducement to Purchase or Consume Spirituous Liquor. The objective of the rule is to establish a clear limit to conduct that might induce a customer to purchase or consume spirituous liquor. This protects public health and safety by not allowing consumption of spirituous liquor to be rewarded.

R19-1-315: Responsibilities of a Licensee that Operates a Delivery Service. The objective of the rule is to require that a licensee that delivers spirituous liquor delivers only to an individual and at a time consistent with the law. This protects public health and safety by ensuring delivery is not made to a minor or intoxicated or disorderly individual.

R19-1-316: Responsibilities of a Liquor Store or Beer and Wine Store Licensee. The objective of the rule is to require that, except in limited circumstances, licensed liquor or beer and wine stores make spirituous liquor available to consumers only in unopened bottles. This protects public health and safety and ensures that an off-sale retailer does not engage in on-sale retailing.

R19-1-317: Responsibilities of a Hotel-Motel or Restaurant Licensee. The objective of the rule is to specify the standards for a hotel-motel or restaurant licensee and the manner in which a hotel-motel or restaurant licensee is required to maintain records. This ensures a hotel-motel or restaurant licensee does not operate as a bar while not becoming licensed as one.

R19-1-318: Responsibilities of a Special Event Licensee. The objective of the rule is to specify the manner in which spirituous liquor is to be dispensed, sold, or served at a special event depending on whether the special event occurs on or off the premises of a licensed retailer. This ensures that spirituous liquor is dispensed, sold, or served in a manner consistent with the license under which it is dispensed, sold, or served and protects the three-tiered system.

R19-1-319: Commercial Coercion or Bribery Prohibited. The objective of the rule is to specify conduct that amounts to bribery of a licensed retailer by a producer or wholesaler and conduct that amounts to commercial coercion by a licensed retailer. This provides a level playing field among producers and wholesalers and retailers.

R19-1-320: Practices Permitted a Producer or Wholesaler. The objective of the rule is to specify conduct that is permitted by a producer or wholesaler because it does not amount to bribery of a licensed retailer. This provides a level playing field among producers and wholesalers and protects the public from the consequences of bribery in the spirituous liquor industry.

R19-1-321: Practices Permitted a Wholesaler. The objective of the rule is to specify conduct that is permitted by a wholesaler because it does not amount to bribery and is a permitted industry practice. This provides a level playing field among wholesalers and protects the public from the consequences of bribery in the spirituous liquor industry.

R19-1-322: Responsibilities of a Registered Retail Agent. The objective of the rule is to specify the manner in which a registered retail agent is to fulfill the purchases of those in the cooperative. This protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-323: Underage Individuals on Licensed Premises. The objective of the rule is to specify the circumstances under which an underage individual is allowed to be on licensed

premises. This protects public health and safety by not exposing underage individuals to consumption of spirituous liquor.

R19-1-324: Standards for Exemption of an Unlicensed Business. The objective of the rule is to specify the circumstances and conditions under which spirituous liquor may be served and consumed on unlicensed premises. This protects public health and safety by imposing limitations of serving and consuming spirituous liquor on unlicensed premises and protects the value of on-sale retail licenses.

R19-1-325: Display of Warning Sign Regarding Consumption of Alcohol; Posting Notice Regarding Firearms. The objective of the rule is to require that all licensed retailers post a sign warning about consumption of alcohol during pregnancy and licensed on-sale retailers that wish to prohibit possession of weapons on the licensed premises. This protects public health and safety.

R19-1-326: Tapping Equipment. The objective of the rule is specify the tapping equipment a wholesaler may provide to a licensed retailer without the tapping equipment amounting to bribery and without the wholesaler being subject to commercial coercion. This provides a level playing field among wholesalers and retailers.

R19-1-327: Domestic Farm Winery Sampling. The objective of the rule is to specify limits of sampling offered by a farm winery on the premises of an off-sale retailer or on-sale retailer with off-sale privileges. This is to protect public health and safety by ensuring that only a sample is provided to each consumer.

R19-1-401: Notice of License Surrender or Application Withdrawal. The objective of the rule is to inform a licensee that notice is required if the licensee intends to surrender the license and inform an applicant that notice is required to withdraw an application. The rule also specifies the circumstances under which a license will be deemed surrendered and the circumstances under which surrender will be denied. This protects public health and safety by ensuring the Department knows which licensees are not operating.

R19-1-402: Registered Retail Agent: Notice of Change in Cooperative-purchase Agreement; List of Cooperative Members. The objective of the rule is to inform a registered retail agent that notice is required when a member of a cooperative-purchase agreement changes. This protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-403: Hotel-Motel or Restaurant Licensee: Notice of Change to Restaurant Facility. The objective of the rule is to inform hotel-motel or restaurant licensees that notice is required before the seating capacity or dimensions of a restaurant are changed. This protects public health and safety by ensuring that a hotel-motel or restaurant licensee is operating as a hotel-motel or restaurant and not as a bar.

R19-1-404: Notice of Sampling on a Licensed Off-sale Retail Premises. The objective of the rule is to inform licensed producers and wholesalers that notice is required before conducting a sampling on licensed off-sale retail premises. This protects public health and safety by limiting the circumstances under which consumption of spirituous liquor is allowed on licensed off-sale retail premises.

R19-1-405: Notice of Change in Status: Active or Nonuse. The objective of the rule is to inform all licensees that notice is required to move the license from active to nonuse status or vice versa. This protects public health and safety by ensuring the Department knows which licensees are not operating.

R19-1-406: Notice of Change in Manager. The objective of the rule is to inform all licensees that notice is required when there is a change in the designated manager. This protects public health and safety by ensuring the Department knows who is responsible for managing licensed premises.

R19-1-407: Notice of Legal or Equitable Interest. The objective of the rule is to inform all persons having a legal or equitable interest in a license that notice of the interest is required.

This protects public health and safety by ensuring the Department knows who owns a license. It also protects the holder of the legal or equitable interest by enabling the Department to provide notice to the holder of actions affecting the license.

R19-1-408: Notice of Change in Business Name, Address, or Telephone Number. The objective of the rule is to provide notice that the Department communicates with a licensee using the information the licensee has provided. This ensures that a licensee knows it is important to keep the Department apprised of changes in contact information.

R19-1-501: General Recordkeeping. The objective of the rule is to establish minimum standards for maintenance of licensee records. This protects public health and safety by enabling the Department to conduct audits to determine whether a licensee is complying with A.R.S. Title 4 and related rules.

R19-1-502: On-sale Retail Personnel Records. The objective of the rule is to establish minimum standards for records regarding on-sale retail personnel. This protects public health and safety by enabling the Department to ensure minors are not being employed by on-sale retailers.

R19-1-503: Records Regarding Cooperative Purchases. The objective of the rule is to establish minimum standards for records regarding cooperative-purchase agreements and cooperative purchases. This protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-504: Record of Delivery of Spirituous Liquor. The objective of the rule is to establish minimum standards for recordkeeping by licensees authorized to deliver spirituous liquor. This protects public health and safety by tracking deliveries and ensuring delivery is not made to an underage individual.

R19-1-505: Report of Act of Violence. The objective of the rule is to inform licensees that an act of violence on licensed premises must be reported to the Department or a law

enforcement agency. This protects public health and safety by enabling an appropriate response to be taken to an act of violence.

R19-1-601: Appeals and Hearings. The objective of the rule is to inform a party that a decision by the Director is not final when made and that all hearings are conducted according to the procedures in A.R.S. Title 41, Chapter 6, Article 10. This protects the due process rights of a party.

R19-1-602: Actions During License Suspension. The objective of the rule is to inform the holder of a suspended license of actions prohibited and required during the time of suspension. This protects public health and safety by ensuring that only actively licensed premises are operating and by providing notice to the public regarding a suspension.

R19-1-603: Seizure of Spirituous Liquor. The objective of the rule is to provide notice that a peace officer is required to seize spirituous liquor if there is probable cause to believe the spirituous liquor is being or is intended to be used contrary to law. This protects public health and safety by ensuring that spirituous liquor is used only as provided by law.

R19-1-604: Closure Due to Violence. The objective of the rule is to provide notice that the Director is authorized to order a licensed premise closed if the Director determines an act of violence is apt to occur at the licensed premise. This protects public health and safety by minimizing the chance of an act of violence occurring on a licensed premise.

R19-1-701: Election of Officers. The objective of the rule is to specify the Board officers and how the Board elects officers. This provides transparency regarding Board actions.

R19-1-702: Determining Whether to Grant a License for a Certain Location. The objective of the rule is to specify the criteria considered by the Board to determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license to a specific unlicensed location. This provides transparency regarding Board actions.

R19-1-703: Rehearing or Review of Decision. The objective of the 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.

R19-1-704: Submitting Documents to the Board. The objective of the rule is to specify the format and time for submitting documents for Board review and action. This increases efficiency in the operation of the Board.

R19-1-705: Judicial Review. The objective of the rule is to inform a party of the right to judicial review of a Board decision and to require that a complaint for judicial review be served on the Director. This increases efficiency in the operation of the Board.

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

   When the Department's rules were made in 2013 and 2014, they were consistent with statute and agency and industry practice. Although statutory changes have occurred since 2014, the changes, which have resulted in some of the rules having minor inconsistencies with statute, have not interfered with the effectiveness of the rules. The Department believes the rules are effective in achieving their objectives because the Department is able to fulfill its statutory responsibility to regulate and license the manufacture, sale, and distribution of spirituous liquor while protecting the health, safety, and welfare of Arizona citizens.

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:

   State statutes applicable to the rules are found at A.R.S. Title 4. Applicable federal law is found at 27 CFR, Chapter 1, Subchapter A. The rules are consistent with federal law. As a result of recent changes to A.R.S. Title 4, there are minor inconsistencies between the statutes and rules.

   - A.R.S. § 4-244(32)(c) was amended so a container into which a licensee dispenses beer for consumption off-sale no longer has to be made of glass. This requires that R19-1-101(2)(c), (3)(c), and (4)(b) be amended.

- Statutes regarding farm wineries and microbreweries were amended so the word "domestic" was deleted. This requires that the following rules be amended: R19-1-101(15), (16), and (46); R19-1-104; R19-1-315; R19-1-327; and R19-1-504.
- A.R.S. § 4-209 was amended so a limited out-of-state producer license became a limited out-of-state winery license and the amount of wine authorized for production by a licensee was changed to 240 gallons. This requires that R19-1-101(26) be amended.
- The legislature removed the Department's authority to charge for a restaurant continuation authorization. This requires that R19-1-102(D) be deleted.
- The legislature removed the dates previously specified in A.R.S. §§ 4-205.02(G), 4-207.01(B), 4-206.01(J), and 4-244.05(J)(4). This requires that R19-1-102(G) through (J) be amended.
- The legislature amended A.R.S. §§ 4-205.08 regarding microbreweries and added 4-205.10 regarding craft distillers so each can ship spirituous liquor to a retail licensee. This requires that R19-1-104 be amended.
- Because the legislature added definitions to A.R.S. § 4-101, the following internal cross references to that statute need to be amended: R19-1-105(B) and R19-1-207.
- Because of legislative changes regarding microbreweries and craft distillers, amendments are needed to R19-1-305, R19-1-315, and R19-1-504.
- The legislature amended A.R.S. § 4-205.08 to increase the maximum amount of beer a microbrewery may produce and to allow manufacturing as well as producing. This requires that R19-1-101(16) be amended.
- The legislature amended A.R.S. § 4-243(B)(3)(c) regarding a wholesaler or producer providing samples of spirituous liquor on an off-sale retailer's premises. This requires that R19-1-320(M) be amended.
- The legislature created three new licenses that need to be addressed in the rules: craft distillery license, craft distiller festival and fair license, and custom crush license. The legislature also added provisions requiring Department approval of remote tasting rooms for a licensed craft distillery or farm winery.
- A.R.S. § 4-221 requires a person possessing or having custody of a still or distilling apparatus to register with the Director. The Department has no rule providing

information about the procedure for registering. The Department previously had a rule on this topic but it was allowed to expire at the time a 5YRR was done in 2006.

- A.R.S. § 4-203.02 authorizes the Director to issue special event licenses. R19-1-205(B) and (C) require the Department to issue a special event license in specified circumstances.

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

   The Department enforces the rules. When there is an inconsistency with statute, such as the production limit for an out-of-state winery or a microbrewery, the material out of which a growler is made, and the addition of three new licenses, the Department enforces the statute.

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

   The rules are generally clear, concise, and understandable and consistent with current rule writing standards. Statutory changes such as deletion of "domestic" when referring to a farm winery or microbrewery require that the rule language be updated but the rules are still 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:

   In an e-mail dated August 28, 2015, Mr. Peter Schelstraete indicates use of the phrase "complaint for judicial review" in R19-1-705(A) and (B) is inconsistent with the statutory phrase "notice of appeal" used in A.R.S. § 12-904. Mr. Schelstraete is correct and the Department will amend the rule to use the correct phrase at the time of its next rulemaking.

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:

In the rulemaking completed in 2013, the Department indicated it expected the following changes to have minimal economic impact:

- Requiring an applicant to submit an application that does not contain a non-technical error;
- Requiring that individuals who take a Department-approved training course take an examination;
- Requiring that the provider of a Department-approved training course allow course participants to evaluate the course and course instructor;
- Requiring that the provider of a Department-approved training course submit updated course materials to the Department annually;
- Establishing standards for a non-contiguous area of a licensed premises;
- Establishing standards for a restaurant to maintain records in auditable form; and
- Establishing several new fees that are specifically authorized by statute.

In the rulemaking completed in 2014, the Department indicated it expected the following changes to have minimal economic impact:

- Clarifies the individuals required to have knowledge of A.R.S. Title 4;
- Clarifies practices of a wholesaler or producer that do not violate the general prohibition against providing an item of value to a retailer; and
- Clarifies standards for operating an unlicensed business.

The Department believes it correctly estimated the rulemakings would have minimal economic impact. The validity of this conclusion is reflected in the fact that members of industry have not asked for additional amendments of the rules.

The Department currently has 12,006 active licensees. The Department issues 23 different kinds of licenses. Out-of-state licensees comprise 15.5 percent of the total. In FY 2015, it issued 4,888 new licenses, including special event permits and interim permits. Twenty-two of the applications were for quota licenses, which are issued through a random-selection process. Eight new quota licenses were issued. A successful applicant for a quota license pays the fair-market value for the license. In 2015, the fair-market value for a bar license was $71,500 in Maricopa County, $27,650 in Pima County, and $57,900 in Yuma County; for a beer and wine bar license, $13,700 in Maricopa County and $10,500 in Pima County; and for a liquor store license, $226,500 in Maricopa County and $71,500 in Pima County. Restaurants, bars, and liquor stores account for approximately 77 percent of the Department's licensees. Because of a statutory change, the Department no longer issues restaurant

continuation authorizations. There were 40 licensees that registered as retail agents so they and the licensees with which they contracted could make bulk purchases of spirituous liquor.

Because restaurant licensees are required to obtain at least 40 percent of revenue from the sale of food, the Department regularly audits restaurant licensees. The rules require a restaurant to maintain records in auditable form. This requirement imposes some cost on restaurant licensees but there has been no objection to the requirement. In FY 2015, the Department conducted 91 audits of restaurants. There is no charge to those audited. Of those audited, 25 licensees failed to meet the required food sale percentage. An additional three restaurants conceded failure to meet the 40% food sale requirement before an audit was conducted and either surrendered the license or obtained a different kind of license. Of the restaurants audited, there were 243 actionable violations. A violation involving failure to comply with a provision of statute or rule is actionable. The action taken depends on the seriousness of the violation and can range from a warning to a fine or temporary license suspension.

Enforcing statute and rule is a major responsibility of the Department. During 2015, the Department received an agency of the year award from the National Liquor Law Enforcement Association. In 2015, the ratio of enforcement officers to licensees was 1:1,095. These officers conducted 2,710 random inspections of licensed premises. The Department's investigators initiated disciplinary action as a result of 521violations. These violations resulted in $472,490 in fines.

At the end of FY 2015, there were 35 liquor-law training providers including six that provide in-house training. These providers taught 65 approved courses. There is no charge to apply to have a training course approved. On average, an individual is charged $25 to participate in the basic liquor-law training course and $35 for the management training course. Last year the Department audited 57 approved training courses for compliance with standards. Six courses were found not to be in compliance, modifications were made by the providers and they were authorized to continue providing training. Additionally, the Department provided 94 training events for 2,462 individuals.

In FY2015, the Department collected $7,246,392 in fees, $107,700 in penalty fees for late renewal, and $472,490 in fines for law violations. The Department also collected $65,208 in fingerprint fees. For FY2015, the Department, which is an appropriated self-funded agency, was appropriated $2,962,500 (38% of that collected) and received $1,012,228 in collected surcharges and fingerprint fees (13% of that collected). Under A.R.S. § 4-115 monies collected but not appropriated are deposited in the general fund. In 2015, this amounted to $3,362,334 (42% of that collected). A.R.S. § 4-115 also provides that a portion of the funds collected from a county be returned to the county. In 2015, $554,728 (seven percent of that collected) was returned to the counties and other state agencies. The Department currently has 38 employees.

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 the 5YRR approved by Council on May 3, 2011, the Department indicated it would amend all of its rules. It has done so.

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:

    Most of the cost for licensure by the Department results from legislative action. Indeed, the legislature set most of the licensing fees (See A.R.S. § 4-209). It is the legislature that requires those who manufacture, sell, or deal in spirituous liquor to obtain a license from the Department and requires the Department to prescribe a form for making application for a license (See A.R.S. § 4-201). It is the legislature that prescribes the qualifications for obtaining a license (See A.R.S. § 4-202). The legislature prescribes restrictions on the location of a licensed premise (See A.R.S. § 4-207), requires that a floor plan be submitted with an application (See A.R.S. § 4-207.01), and establishes grounds for revocation, suspension, and refusal to renew a license (See A.R.S. § 4-210). It is the legislature that

requires a licensee to post a sign warning of the dangers of consuming spirituous liquor while pregnant and the license issued by the Department (See A.R.S. §§ 4-261 and 4-262). In addition to the cost related to state legislative action, there are costs related to federal regulation. For example, federal law addresses labeling and advertising requirements, tied-house restrictions, and commercial bribery.

The following rule requirements result in minimal costs to licensees or others:

- Completing and submitting an initial and renewal license application;
- Complying with the minimum standards for a liquor law training course, some of which require that records be maintained, updated materials be submitted to the Department, and Department review of records and course audits be allowed;
- Labeling shipping containers;
- Making application before extending license premises;
- Storing spirituous liquor only on licensed or otherwise approved premises;
- Ensuring an erotic entertainer is at least 19 years old;
- Taking steps to ensure no prohibited acts occur on the licensed premises;
- Accurately labeling dispensing equipment;
- Avoiding actions that might induce purchase or consumption of spirituous liquor;
- Complying with the specific responsibilities applicable to each type of licensee;
- Avoiding service to underage individuals;
- Maintaining records of tapping equipment sold to a licensed retailer;
- Providing notice to the Department when changes are made;
- Maintaining required records; and
- Submitting documents to the Board in the required format and at the specified time.

The Department concludes that these requirements impose the least burdens and costs possible while enabling the Department to fulfill its statutory responsibility to protect public health and safety. The number of persons that have chosen to obtain a license from the Department indicates they have concluded the benefits from doing so outweigh the costs.

12. <u>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:</u>

None of the rules is more stringent than the applicable federal law, 27 CFR, Chapter 1, Subchapter A.

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:

    All the licenses defined in R19-1-101 and other authorizations and registrations required under A.R.S. Title 4 comply with A.R.S. § 41-1037 because they are issued to qualified individuals or entities 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:

    When this 5YRR is approved by the Council, the Department intends to seek an exception to EO2016-03 to enable it to address the issues identified by this review. Assuming the Department is able to obtain an exception, it will amend the following rules: R19-1-101, R19-1-102, R19-1-104, R19-1-105, R19-1-202, R19-1-205, R19-1-207, R19-1-305, R19-1-315, R19-1-320, R19-1-327, R19-1-504, R19-1-603, R19-1-704, and R19-1-705. Additionally, the Department will make a rule regarding registration of stills as required under A.R.S. § 4-221. It is the Department's intention to complete the rulemaking by June 30, 2017.

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL

(Authority: A.R.S. § 4-101 et seq.)

ARTICLE 1. GENERAL PROVISIONS

(A.R.S. § 4-112(A))

Section
R19-1-101. Definitions
R19-1-102. Fees and Surcharges; Service Charges
R19-1-103. A.R.S. Title 4 Training Course: Minimum Standards
R19-1-104. Shipping Container Labeling; Shipping Requirements
R19-1-105. Standards for a Non-contiguous Area of a Licensed Premises
R19-1-106. Severability
R19-1-107. Electronic Signatures
R19-1-110. Sign Limitations

ARTICLE 2. LICENSING

(A.R.S. § 4-112(B)(1))

Section
R19-1-201. Who May Apply for a License
R19-1-202. Application Required
R19-1-203. Registration of a Retail Agent
R19-1-204. Repealed Obtaining a Quota License
R19-1-205. Requirements for a Special Event License
R19-1-206. Criteria for Issuing a Restaurant License
R19-1-207. Extension of Premises
R19-1-208. Notice of Application for a Conveyance License
R19-1-209. Licensing Time-frames

ARTICLE 3. LICENSEE RESPONSIBILITIES

Section
R19-1-302. Knowledge of Liquor Law; Responsibility
19-1-303. Authorized Spirituous Liquor
R19-1-304. Storing Spirituous Liquor on Unlicensed Premises
R19-1-305. Paying Taxes Required
R19-1-306. Bottle Labeling Requirements
R19-1-307. Bottle Reuse or Refilling Prohibited
R19-1-308. Age Requirement for Erotic Entertainers
R19-1-309. Prohibited Acts
R19-1-310. Prohibited Films and Pictures
R19-1-312. Accurate Labeling of Dispensing Equipment Required
R19-1-314. Prohibited Inducement to Purchase or Consume Spirituous Liquor
R19-1-315. Responsibilities of a Licensee that Operates a Delivery Service
R19-1-316. Responsibilities of a Liquor Store or Beer and Wine Store Licensee
R19-1-317. Responsibilities of a Hotel-Motel or Restaurant Licensee
R19-1-318. Responsibilities of a Special Event Licensee
R19-1-319. Commercial Coercion or Bribery Prohibited

R19-1-320. Practices Permitted by a Producer or Wholesaler
R19-1-321. Practices Permitted by a Wholesaler
R19-1-322. Responsibilities of a Registered Retail Agent
R19-1-323. Underage Individuals on Licensed Premises
R19-1-324. Standards for Exemption of an Unlicensed Business
R19-1-325. Display of Warning Sign Regarding Consumption of Alcohol; Posting Notice Regarding Firearms
R19-1-326. Tapping Equipment
R19-1-327. Domestic Farm Winery Sampling

ARTICLE 4. REQUIRED NOTICES TO DEPARTMENT

Section
R19-1-401. Notice of License Surrender or Application Withdrawal
R19-1-402. Registered Retail Agent: Notice of Change in Cooperative-purchase Agreement; List of Cooperative Members
R19-1-403. Hotel-Motel or Restaurant Licensee: Notice of Change to Restaurant Facility
R19-1-404. Notice of Sampling on a Licensed Off-sale Retail Premises
R19-1-405. Notice of Change in Status: Active or Nonuse
R19-1-406. Notice of Change in Manager
R19-1-407. Notice of Legal or Equitable Interest
R19-1-408. Notice of Change in Business Name, Address, or Telephone Number

ARTICLE 5. REQUIRED RECORDS AND REPORTS

Section
R19-1-501. General Recordkeeping
R19-1-502. On-sale Retail Personnel Records
R19-1-503. Records Regarding Cooperative Purchases
R19-1-504. Record of Delivery of Spirituous Liquor
R19-1-505. Report of Act of Violence

ARTICLE 6. VIOLATIONS; HEARINGS; DISCIPLINE

Section
R19-1-601. Appeals and Hearings
R19-1-602. Actions During License Suspension
R19-1-603. Seizure of Spirituous Liquor
R19-1-604. Closure Due to Violence

ARTICLE 7. STATE LIQUOR BOARD

Section
R19-1-701. Election of Officers
R19-1-702. Determining Whether to Grant a License for a Certain Location
R19-1-703. Rehearing or Review of Decision
R19-1-704. Submitting Documents to the Board
R19-1-705. Judicial Review

ARTICLE 1. GENERAL PROVISIONS

R19-1-101. Definitions

A. The definitions in A.R.S. §§ 4-101, 4-205.02, 4-205.03, 4-205.06, 4-207, 4-210, 4-227, 4-243, 4-243.01, 4-244, 4-248, 4-251, and 4-311 apply to this Chapter. Additionally, in A.R.S. Title 4 and this Chapter, unless the context otherwise requires:

1. "Association" means a group of individuals who have a common interest that is organized as a non-profit corporation or fraternal or benevolent society and owns or leases a business premises for the group's exclusive use.
2. "Bar license" (Series 6) means authorization issued to an on-sale retailer to sell:
   a. Spirituous liquors in individual portions for consumption on the licensed premises;
   b. Spirituous liquors in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percentage of the sales price of on-sale spirituous liquor established under A.R.S. § 4-206.01(F); and
   c. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).
3. "Beer and wine bar license" (Series 7) means authorization issued to an on-sale retailer to sell:
   a. Beer and wine in individual portions for consumption on the licensed premises;
   b. Beer and wine in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percentage of the sales price of on-sale spirituous liquor established under A.R.S. § 4-206.01(F); and
   c. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).
4. "Beer and wine store license" (Series 10) means authorization issued to an off-sale retailer to sell:
   a. Wine and beer in an original, unopened, container for consumption off the licensed premises; and
   b. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).
5. "Business" means an enterprise or organized undertaking conducted regularly for profit, which may be licensed or unlicensed.
6. "Business premises" means real property and improvements from which a business operates.
7. "Catering establishment" means a business that is available for hire for a particular event and at which food and service is provided for people who attend the event.
8. "Club license" (Series 14) means authorization issued to a club to sell spirituous liquors only to members and members' bona fide guests for consumption only on the premises of the club.
9. "Cocktail mixer" means a non-alcoholic liquid or solid mixture used for mixing with spirituous liquor to prepare a beverage.
10. "Conveyance license" (Series 8) means authorization issued to the owner or lessee of an airplane, train, or boat to sell spirituous liquors for consumption only on the airplane, train, or boat.
11. "Cooler product" means an alcoholic beverage made from wine or beer and fruit juice or fruit flavoring, often in combination with a carbonated beverage and sugar but does not include a formula wine as defined at 27 CFR 24.10.
12. "Deal" means to sell, trade, furnish, distribute, or do business in spirituous liquor.
13. "Department" means the Director of the Department of Liquor Licenses and Control and the State Liquor Board.
14. "Direct shipment license" (Series 17) means authorization issued to producer, exporter, importer, or rectifier to take an order for spirituous liquor and ship the order under A.R.S. § 4-203.04(A)-(I).
15. "Domestic farm winery license" (Series 13) means authorization issued to a domestic farm winery that produces at least 200 gallons but not more than 40,000 gallons of wine annually. For the purposed of A.R.S. § 4-243, a domestic farm winery is considered an "other producer."
16. "Domestic microbrewery license" (Series 3) means authorization issued to a domestic microbrewery that produces at least 5,000 gallons of beer following its first year of operation and not more than 1.24 million

gallons of beer annually and includes authorization to sell beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32). For the purposed of A.R.S. § 4-243, a domestic microbrewery is considered an "other producer."

17. "Entertainment," as used in A.R.S. § 4-244.05, means any form of amusement including a theatrical, opera, dance, or musical performance, motion picture, videotape, audiotape, radio, television, carnival, game of chance or skill, exhibit, display, lecture, sporting event, or similar activity.
18. "Erotic entertainer," as used in A.R.S. § 4-112(G), means an employee who performs in a manner or style designed to stimulate or arouse sexual thoughts or actions.
19. "Government license" (Series 5) has the meaning set forth at A.R.S. § 4-101.
20. "Hotel-motel license" (Series 11) means authorization issued to a hotel or motel that has a restaurant where food is served to sell spirituous liquors for consumption on the premises of the hotel or motel or by means of a mini-bar.
21. "Incidental convenience," as used in A.R.S. § 4-244.05(I), means allowing a customer to possess and consume the amount of spirituous liquor stated in R19-1-324 while at a business to obtain goods or services regularly offered to all customers.
22. "In-state producer license" (Series 1) means authorization issued to an entity to produce or manufacture spirituous liquor in Arizona.
23. "Interim permit" means temporary authorization issued under A.R.S. § 4-203.01 that allows continued sale of spirituous liquor.
24. "Licensed" means a license or interim permit is issued under A.R.S. Title 4 and this Chapter, including a license or interim permit on nonuse status.
25. "Licensed retailer" means an on-sale or off-sale retailer.
26. "Limited out-of-state producer license" (Series 2L) means authorization issued to an out-of-state producer to sell no more than 50 cases of spirituous liquor through a wholesaler annually.
27. "Liquor store license" (Series 9) means authorization issued to an off-sale retailer to sell:
    a. Spirituous liquors in an original, unopened, container for consumption off the licensed premises; and
    b. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).
28. "Non-technical error" means a mistake on an application that has the potential to mislead regarding the truthfulness of information provided.
29. "Nonuse" means a license is not used to engage in business activity authorized by the license for at least 30 consecutive days.
30. "Out-of-state producer license" (Series 2) means authorization issued to an entity to produce, export, import, or rectify spirituous liquors outside of Arizona and ship the spirituous liquors to a wholesaler.
31. "Party" has the same meaning as prescribed in A.R.S. § 41-1001.
32. "Physical barrier" means a wall, fence, rope, railing, or other temporary or permanent structure erected to restrict access to a designated area of a licensed premises.
33. "Producer" means the holder of an in-state, out-of-state, or limited out-of-state producer license.
34. "Product display" means a wine rack, bin, barrel, cask, shelving, or similar item with the primary function of holding and displaying spirituous liquor or other products.
35. "Quota license" means a bar, beer and wine bar, or liquor store license.
36. "Rectify" means to color, flavor, or otherwise process spirituous liquor by distilling, blending, percolating, or other processes.
37. "Reset" means a wholesaler adjusts spirituous liquor on the shelves of a licensed retailer.
38. "Restaurant continuation authorization" means authorization issued to the holder of a restaurant license to operate under the restaurant license after it is determined that food sales comprise at least 30 percent but less than 40 percent of the business's gross revenue.
39. "Restaurant license" (Series 12) means authorization issued to a restaurant, as defined in A.R.S. § 4-205.02, to sell spirituous liquors for consumption only on the restaurant premises.
40. "Second-party purchaser" means an individual who is of legal age to purchase spirituous liquor and buys spirituous liquor for an individual who may not lawfully purchase spirituous liquor in Arizona.

41. “Special event license” (Series 15) means authorization issued to a charitable, civic, fraternal, political, or religious organization to sell spirituous liquors for consumption on or off the premises where the spirituous liquor is sold only for a specified period.
42. “Tapping equipment” means beer, wine, and distilled spirit dispensers as stated in R19-1-326.
43. “Technical error” means a mistake on an application that does not mislead regarding the truthfulness of the information provided.
44. “Transfer” means to:
    a. Move a license from one location to another location within the same county; or
    b. Change ownership, directly or indirectly, in whole or in part, of a business.
45. “Wholesaler license” (Series 4) means authorization issued to a wholesaler, as prescribed at A.R.S. § 4-243.01, to warehouse and distribute spirituous liquors to a licensed retailer or another licensed wholesaler.
46. “Wine festival or fair license” (Series 16) means authorization issued for a specified period to a domestic farm winery to serve samples of its products and sell the products in individual portions for consumption on the premises or in original, unopened, containers for consumption off the premises.

B. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note

Former Rule 1; Former Section R4-15-01 renumbered as Section R4-15-101 without change effective October 8, 1982 (Supp. 82-5). Section repealed, new Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-101 recodified from R4-15-101 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-102. Fees and Surcharges; Service Charges

A. Most of the fees and surcharges collected by the Department are established by statute.

B. After a license other than a special event, wine festival or fair, or direct shipment license is approved but before the license is issued, the person that applied for the license shall pay the issuance fee and all applicable surcharges. If the license will be issued less than six months before it is scheduled to be renewed, the person that applied for the license shall also pay one-half of the annual renewal fee.

C. After a new bar, beer and wine bar, or liquor store license is approved but before the license is issued, the person that applied for the license shall, as required by A.R.S. § 4-206.01(A)-(E), pay the fair market value of the license.

D. After a restaurant continuation authorization is approved but before the authorization is issued, the person that applied for the authorization shall pay a one-time fee of $30,000.

E. A licensee shall pay the renewal fee established under A.R.S. 4-209(D) annually or double the renewal fee established under A.R.S. 4-209(D) biennially, as specified by the Department. A licensee that fails to submit a renewal application by the deadline established by the Department shall pay a penalty of $150 in addition to the renewal fee.

F. At the time of application for a license, an individual required under A.R.S. Title 4 or this Chapter to submit fingerprints for a criminal history background check, shall pay the charge established by the Department of Public Safety for processing the fingerprints. The individual may have the fingerprints taken by a law enforcement agency, other qualified entity, or the Department. If the fingerprints are taken by the Department, the individual shall pay to the Department the actual cost of this service to a maximum of $20.

G. Until the date specified in A.R.S. § 4-205.02(G), the Director shall collect from an applicant for a restaurant license the actual amount incurred to conduct a site inspection to a maximum of $50.

H. Until the date specified in A.R.S. § 4-207.01(B), the Director shall collect from a licensee the actual amount incurred to review and act on an application for approval to alter or change a licensed premises to a maximum of $50.

I. Until the date specified in A.R.S. § 4-206.01(J), the Director establishes and shall collect a fee of $100 from an applicant that applies for sampling privileges associated with a liquor or beer and wine store license and $60 to renew the sampling privilege.

J. Until the date specified in A.R.S. § 4-244.05(J)(4), the Director shall collect from the owner of an unlicensed establishment or premises acting under A.R.S. § 4-244.05 the actual amount incurred to conduct an inspection for compliance with R19-1-324 to a maximum of $50.

K. If a check provided to the Department by an applicant or licensee is dishonored by the bank upon presentment, the Department shall:

1. As allowed by A.R.S. § 44-6852, require the applicant or licensee to pay the actual charges assessed by the bank plus a service fee of $25;
2. Not issue a license, permit, or other approval to the applicant or licensee until all fees, including those referenced in subsection (K)(1), are paid by money order; and
3. Require the applicant or licensee to pay all future fees to the Department by money order.

L. As allowed under A.R.S. §35-142(K), the Department may impose a convenience fee for accepting payment made by credit or debit card.

M. This Section is authorized by A.R.S. §§ 4-112(G)(10), 4-205.02, 4-206.01, 4-207.01(B), 4-209, 4-244.05, and 35-142(K).

Historical Note

Former Rule 2; Former Section R4-15-02 renumbered as Section R4-15-102 without change effective October 8, 1982 (Supp. 82-5). Repealed effective July 11, 1983 (Supp. 83-4). New Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-102 recodified from R4-15-102 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 5119, effective January 9, 2006 (Supp. 05-4). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-103. A.R.S. Title 4 Training Course: Minimum Standards

A. As authorized by A.R.S. § 4-112(G)(2), the Department establishes the following minimum standards for an A.R.S. Title 4 training course.

1. A provider of a training course shall ensure that course content, training materials, and examination provide current reference and practical application of statute and this Chapter for:
   a. Basic liquor law applicable to an on-sale retail licensee,
   b. Management training applicable to an on-sale retail licensee,
   c. Basic liquor law applicable to an off-sale retail licensee, and
   d. Management training applicable to an off-sale retail licensee;
2. A provider of a Basic On-sale training course shall ensure that the course is a minimum of three hours, excluding sign-in and break times, and course content includes the following topics:
   a. General law regarding spirituous liquor.
      i. Review of requirements for licensees and employees in Title 4 and this Chapter,
      ii. Role and function of the Arizona Department of Liquor Licenses and Control,
      iii. Potential legal risks to an on-sale retail licensee,
      iv. Potential legal risks to an employee of an on-sale retail licensee,
      v. Distinction between off- and on-sale license privileges, and
      vi. Types and privileges of on-sale retail licenses,
   b. Law regarding a licensed premises.
      i. The licensed premises defined;
      ii. Entertainment within or on the licensed premises, private parties, special events, or gambling;
      iii. Spirituous liquor brought onto or removed from the licensed premises; and
      iv. Extending or changing the licensed premises.
   c. Law regarding age.
      i. Selling spirituous liquor to persons of legal age;
      ii. When to require identification of legal age;
      iii. Recognizing acceptable forms of identification;
      iv. Recognizing invalid forms of identification;
      v. Documenting identification inspection by using an ID Log;

vi. Underage individuals in a bar or restaurant at which spirituous liquor is served;
vii. The Covert Underage Buyer Program; and
viii. Refusing to sell spirituous liquor to an underage individual using policy, procedure, and skill assessment;

d. Law regarding intoxication.
   i. The effects of spirituous liquor and recognizing signs of obvious intoxication;
   ii. Responsibility for the safety of customers;
   iii. Service limitations of spirituous liquor at a licensed premises, special event, or sampling event;
   iv. Monitoring customer consumption and intervention techniques using skill assessment; and
   v. Refusing spirituous liquor service or sale to an intoxicated individual using policy, procedure, and skill assessment;
e. Law regarding second-party sales of spirituous liquor.
   i. Definition of second-party sale,
   ii. Licensee responsibilities regarding second-party sales,
   iii. Recognizing a second-party purchaser,
   iv. Preventing a second-party sale, and
   v. Refusing to sell to a second-party purchaser;
f. Employee consumption of spirituous liquor;
g. Law regarding legal hours of sale and payment for spirituous liquor at retail locations;
h. Disorderly conduct and acts of violence.
   i. Defining disorderly conduct and acts of violence;
   ii. Maintaining order on the licensed premises using policy, procedures, and skill assessment;
   iii. Locating forms and reporting requirements for an act of violence;
   iv. Repeated acts of violence; and
   v. Firearms on the licensed premises;
i. Management of problem situations.
   i. Kinds of problem situations that may arise,
   ii. Recognizing a problem situation, and
   iii. Employee responsibilities in a problem situation; and
j. Course review.
   i. Summarize course content,
   ii. Administer to all participants the examination required under subsection (A)(10),
   iii. Have all participants complete the Course Evaluation Form required under subsection (A)(9), and
   iv. Issue to qualifying participants the Certificate of Completion required under subsection (A)(11).

3. A provider of a Management On-sale training course shall ensure that the course is a minimum of two hours, excluding sign-in and break times, is preceded by the Basic On-sale training course outlined in subsection (A)(2), and management content includes the following topics:
   a. Making changes to and deactivating a liquor license.
      i. Liquor license application requirements;
      ii. The “capable, qualified, and reliable” requirements for licensure;
      iii. Definition of controlling person, types of ownership, and ownership that is unlawful;
      iv. Local government approval of liquor license application, including an application for a special event;
      v. Distinction between the Director and the Board; and
      vi. License application protests, requirements, and procedure;
   b. Law enforcement regarding spirituous liquor.
      i. Routine liquor inspection of premises,
      ii. Common liquor law violations,
      iii. Compliance meetings and actions,
      iv. Office of Administrative Hearings,
      v. Grounds for suspension or revocation,
      vi. Administrative liability,

vii. Criminal liability, and
viii. Civil liability;

c. Licensed premises.
   i. Diagramming licensed premises, including hotel and motel locations;
   ii. Altering licensed premises;
   iii. Changing name of business;
   iv. Patio requirements; and
   v. Unlicensed locations;

d. Liquor license.
   i. Posting the liquor license,
   ii. Required and optional signs,
   iii. Renewing license,
   iv. Recordkeeping requirements,
   v. Employee log, and
   vi. Change in active or nonuse status;

e. Management requirements.
   i. Defining on-site manager, responsibilities, and completion of the required questionnaire;
   ii. Managing employee and customer safety;
   iii. Changing managers;
   iv. Changing agents;
   v. Restructure; and
   vi. Locating forms and required reporting;

f. Spirituous liquor marketing.
   i. Coupons and rebates,
   ii. Happy hour,
   iii. Advertising and signage, and
   iv. Promotional and novelty items;

g. General business practices.
   i. Sources of spirituous liquor;
   ii. Credit purchase of spirituous liquor;
   iii. Delivering, shipping, and internet selling of spirituous liquor;
   iv. Off-premise storage of spirituous liquor;
   v. Wholesaler and retailer relationship and inducements;
   vi. Sampling events of spirituous liquor;
   vii. Special events and auction of spirituous liquor;
   viii. Wine and food clubs;
   ix. Cooperative purchase of spirituous liquor,
   x. Locking entrance to licensed premises and private parties,
   xi. Limiting service to and consumption of spirituous liquor by employees, and
   xii. Owner service and consumption of spirituous liquor;

h. Disorderly conduct and acts of violence. The information specified under subsection (A)(2)(h) and management responsibilities; and

i. Course review. The activities specified under subsection (A)(2)(j).

4. A provider of a Basic Off-sale training course shall ensure that the course is a minimum of two hours, excluding sign-in and break times, and course content includes the following topics:

a. General law regarding spirituous liquor.
   i. The information specified under subsections (A)(2)(a)(i) and (ii),
   ii. Potential legal risks to an off-sale retail licensee,
   iii. Potential legal risks to an employee of an off-sale retail licensee, and
   iv. Types and privileges of off-sale retail licenses;

b. Law regarding a licensed premises. The information specified under subsections (A)(2)(b)(i), (ii), and (iv);

c. Law regarding age. The information specified under subsections (A)(2)(c)(i) through (v) and (vii) and (viii);
d. Law regarding intoxication. The information specified under subsections (A)(2)(d)(i) through (iii), and (v);
e. Law regarding second-party sales of spirituous liquor. The information specified under subsections (A)(2)(e);
f. Employee consumption of spirituous liquor.
g. Law regarding legal hours of sale.
    i. Legal hours of sale in Arizona, and
    ii. Refusing an after-hour sale using skill assessment;
h. Law regarding sale of broken packages and on-premises consumption.
    i. Definition of broken package and on-premises consumption,
    ii. Advising a customer of off-sale consumption restrictions using skill assessment,
    iii. Refusing to allow a customer to open or consume spirituous liquor on the licensed premises using skill assessment, and
    iv. Refusing to allow a customer to consume spirituous liquor in parking area or property adjacent to licensed premises using skill assessment;
i. Disorderly conduct and acts of violence. The information specified under subsection (A)(2)(h);
j. Management of problem situations. The information specified under subsections (A)(2)(i); and
k. Course review. The activities specified under subsection (A)(2)(j).

5. A provider of a Management Off-sale training course shall ensure that the course is a minimum of two hours, excluding sign-in and break times, and is preceded by the Basic Off-sale training course outlined in subsection (A)(4), and management content includes the following topics:
    a. Making changes to and deactivating a liquor license. The information specified under subsection (A)(3)(a);
    b. Law enforcement regarding spirituous liquor. The information specified under subsection (A)(3)(b);
    c. Licensed premises. The information specified under subsection (A)(3)(c);
    d. Liquor license. The information specified under subsection (A)(3)(d);
    e. Management requirements. The information specified under subsection (A)(3)(e);
    f. Spirituous liquor marketing. The information specified under subsections (A)(3)(f)(i), (iii), and (iv);
    g. General business practices.
        i. The information specified under subsections (A)(3)(g)(i) through (vii) and (ix) though (xii), and
        ii. Drive-through purchase of spirituous liquor;
    h. Disorderly conduct and acts of violence. The information specified under subsection (A)(2)(h) and management responsibilities; and
    i. Course review. The activities specified under subsection (A)(2)(j).
6. A provider of a Basic Off-sale with On-sale Privileges training course shall ensure that the course addresses the topics specified under subsections (A)(2) and (4).
7. A provider of a Management Off-sale with On-sale Privileges training course shall ensure that the course addresses the topics specified under subsections (A)(3) and (5).
8. A provider of a management training course shall ensure that a sign-in roster is completed and provides the following information:
    a. Name of the course provider,
    b. Date on which the course was conducted,
    c. Location at which the course was conducted,
    d. Name of individual who taught the course,
    e. Printed name and signature of each participant, and
    f. Form of identification accepted by the provider to verify each participant’s identity and the number and expiration date of the identification;
9. The Department shall provide a training provider with a Course Evaluation Form that allows a course participant to evaluate the knowledge and competence of the course trainer and the quality of the course.

10. A provider of a training course shall administer an objective examination to measure each participant's completion of the course.
11. The Department shall provide a training provider with an authorized Certificate of Completion form to issue to each participant who attends the course in its entirety, takes the examination required under subsection (A)(10), and completes the Course Evaluation form required under subsection (A)(9). The Department shall ensure that the Certificate of Completion contains the following information:
    a. Name of the participant who completed the course,
    b. Date on which the course was attended,
    c. Notice that the Certificate of Completion expires three years from the date of issuance,
    d. Whether the completed course addressed on-sale or off-sale retail requirements or a combination of both,
    e. Whether the completed course addressed basic or management information or a combination of both,
    f. Name of individual who taught the training course, and
    g. Name of the course provider.
12. A provider of a training course shall:
    a. Maintain for two years:
        i. A record of all Certificates of Completion issued under subsection (A)(11),
        ii. Course Evaluation Forms completed by participants as required under subsection (A)(9),
        iii. Examination results for each course participant as required under subsection (A)(10), and
        iv. Course sign-in rosters required under subsection (A)(8); and
    b. Submit to the Department by August 1 of each year, either by mail or electronically, an updated syllabus, examination, and other course materials for each training course provided. The provider shall ensure that the updated syllabus, course materials, and examination clearly indicate:
        i. Whether the course is on-sale, off-sale, or a combination of both;
        ii. Whether the course is basic or basic plus management;
        iii. The name of each trainer authorized by the provider to teach each course;
        iv. A list of individuals who are no longer authorized by the provider to teach its courses; and
        v. The name, daytime telephone number, and e-mail address of the person responsible for the course provider.

B. Before providing a training course to participants, the provider of the training course shall apply to the Department for approval of the course content.

C. The provider of an approved training course shall, upon request, make the following available to the Department:
1. Record of the Certificates of Completion maintained under subsection (A)(11);
2. All current training course syllabi, course materials, examinations, and Employee Information Forms;
3. A copy of all materials provided to course participants;
4. A copy of all teaching aids used in the training course; and
5. A copy of the Course Evaluations Forms completed under subsection (A)(9).

D. The Department may, at any time, review an approved training course to determine that the course continues to meet the minimum standards specified in this Section. A provider shall inform the Department, upon request, of the date, time, and location of all scheduled training courses and allow the Department to audit the courses for:
1. Compliance with this Section, and
2. Quality and accuracy of the training course content.

E. If the Department determines that a training course fails to meet the minimum standards specified in this Section, the Department shall give notice to the course provider regarding the areas of non-compliance, the steps required to be in compliance, and the date by which compliance must be achieved.

F. If the Department determines that a provider who received notice under subsection (E) failed to achieve compliance by the date specified, the Department may take action to suspend or revoke approval of the training course.

G. This Section is authorized by A.R.S. § 4-112(G)(2).

Historical Note

Former Rule 3; Former Section R4-15-03 renumbered as Section R4-15-103 without change effective October 8, 1982 (Supp. 82-5). Section repealed, new Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-103 recodified from R4-15-103 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-104. Shipping Container Labeling; Shipping Requirements

A. An individual or entity, whether licensed or unlicensed under A.R.S. Title 4 and this Chapter, shall ensure that spirituous liquor shipped or offered for shipping within this state for a commercial purpose is in a container that is clearly and conspicuously labeled with or is accompanied by a shipping document containing the following information:
1. Name of the individual or entity consigning or shipping the spirituous liquor,
2. Name and address of the individual or entity to whom the spirituous liquor will be delivered, and
3. Identification of the spirituous liquor.

B. An individual who transports spirituous liquor other than beer from a wholesaler to a licensed retailer shall ensure that:
1. The individual possesses a bill or memorandum from the wholesaler to the licensed retailer showing the:
   a. Name and address of the wholesaler,
   b. Name and address of the licensed retailer, and
   c. Quantity and type of the spirituous liquor sold and transported; and
2. The bill or memorandum referenced under subsection (B)(1) is exhibited on demand by any peace officer.

C. An individual or entity that ships or offers for shipping spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:
1. With the exception of wine that is being shipped under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7) or (9) by a domestic farm winery licensee or beer that is being shipped under A.R.S. § 4-205.08(D)(5) by a domestic microbrewery licensee, the spirituous liquor is consigned to a wholesaler authorized to sell or deal in the particular spirituous liquor being shipped; and
2. The spirituous liquor is placed for shipping with:
   a. A common carrier or transportation company that is in compliance with all Arizona and federal law regarding operation of an interstate transportation business, or
   b. The wholesaler to whom the spirituous liquor is consigned.

D. A common carrier or transportation company hired to transport spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:
1. The common carrier or transportation company maintains possession of the spirituous liquor from the time the spirituous liquor is placed for shipping until it is delivered; and
2. With the exception of spirituous liquor that is being shipped under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7) or (9) by a domestic farm winery licensee, the spirituous liquor is delivered to the licensed premises of the wholesaler to whom the spirituous liquor is consigned.

E. An individual or entity shall not construe this Section in a manner that interferes with the interstate shipment of spirituous liquor, including beer and wine, through this state if the spirituous liquor, as it passes through this state, is under the control of a common carrier or transportation company hired to transport the spirituous liquor.

F. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note

Former Rule 4; Former Section R4-15-04 renumbered as Section R4-15-104 without change effective October 8, 1982 (Supp. 82-5). Repealed effective March 3, 1993 (Supp. 93-1). R19-1-104 recodified from R4-15-104 (Supp. 95-1). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-105. Standards for a Non-contiguous Area of a Licensed Premises

A. When an application is made for inclusion of a non-contiguous area in a licensed premises, the Department shall approve inclusion of the non-contiguous area only if the following standards are met:

1. Unless application is made by a club licensee, the public convenience requires and the best interest of the community will be substantially served by approving inclusion of the non-contiguous area in the licensed premises;
2. The non-contiguous area does not violate A.R.S. § 4-207;
3. The non-contiguous area will be a permanent part of the licensed premises;
4. The walkway or driveway that separates the non-contiguous area from the remainder of the licensed premises is no more than 30 feet wide;
5. The non-contiguous area is completely enclosed by a permanently installed fence that is at least three feet in height;
6. Construction of the business premises in the non-contiguous area will comply with all applicable building and safety standards before spirituous liquor is sold or served in the non-contiguous area; and
7. The licensee demonstrates control of the taking of spirituous liquor between the non-contiguous area and the remainder of the licensed premises.

B. This Section is authorized by A.R.S. § 4-101(26).

Historical Note

Former Rule 5; Former Section R4-15-05 renumbered as Section R4-15-105 without change effective October 8, 1982 (Supp. 82-5). R19-1-105 recodified from R4-15-105 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section renumbered to R19-1-108, new Section R19-1-105 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-106. Severability

A. In this Chapter, the subsections of each Section are severable and each Section is severable from the Chapter. If a Section or subsection or the application of a Section or subsection to a particular individual, entity, or circumstance is held to be invalid, the invalidity does not affect the validity of other Sections or subsections and does not affect the validity of the Section or subsection to a different individual, entity, or circumstance.

B. This Section is authorized by A.R.S. § 4-112(B)(1)(b).

Historical Note

Former Rule 6; Former Section R4-15-06 renumbered as Section R4-15-106 without change effective October 8, 1982 (Supp. 82-5). Amended effective July 11, 1983 (Supp. 83-4). Section repealed, new Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-106 recodified from R4-15-106 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-107. Electronic Signatures

A. An applicant, licensee, or other person that submits to the Department a form or document required under A.R.S. Title 4 or this Chapter may submit the form or document electronically.

B. This Section is authorized by A.R.S. § 4-112(G)(11).

Historical Note

Adopted effective April 26, 1977 (Supp. 77-2). Former Section R4-15-07 renumbered as Section R4-15-107 without change effective October 8, 1982 (Supp. 82-5). Amended effective January 28, 1987 (Supp. 87-1). R19-1-107 recodified from R4-15-107 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-110. Sign Limitations

A. A person, firm, or corporation engaged in business as a manufacturer, distiller, brewer, vintner, or wholesaler or any officer, director, agent, or employee of such person may lend, to the retailer any sign for interior or exterior use provided:

1. The sign must bear conspicuous and substantial advertising matter about a product of the manufacturer, distiller, brewer, vintner, or wholesaler.
2. The cost of the sign may not exceed $400.
3. A sign may not be utilitarian except as to its advertising or information content.
4. No such signs shall be offered or furnished by any manufacturer, distiller, brewer, vintner or wholesaler or by any officer, director, agent, or employee thereof, or by any other person as an inducement to the retailer to purchase or use the products of such manufacturer, distiller, brewer, vintner or wholesaler to the exclusion in whole or in part of the product of any competitor.

B. No signs or other advertising matter used in connection with the licensed premises of any retailer of alcoholic beverages shall be obscene as determined by applying contemporary state standards.

C. Licensed special events are not subject to the limitations of subsections (A)(1) through (3).

Historical Note

New Section R19-1-110 renumbered from R19-1-210 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 2. LICENSING

R19-1-201. Who May Apply for a License

A. Except as provided in subsection (B) and not withstanding any other law, the following pre-requisites apply for a license under A.R.S. Title 4 and this Chapter.

1. If an individual applies for a license, the individual shall be:
   a. A citizen of the United States or a legal resident alien, and
   b. A bona fide resident of Arizona;
2. If a partnership applies for a license, each partner shall meet the criteria in subsection (A)(1);
3. Except as provided in subsection (A)(6), if a corporation or limited liability company applies for a license, the corporation or limited liability company shall:
   a. Be qualified to do business in Arizona, and
   b. Hold the license through an agent who is an individual that meets the criteria in subsection (A)(1);
4. If a limited partnership applies for a license:
   a. An individual general partner, but not a limited partner, shall meet the criteria in subsection (A)(1); and
   b. A corporate general partner shall meet the criteria in subsection (A)(3);
5. If a club or governmental entity applies for a license, the club or governmental entity shall hold the license through an agent who is an individual that meets the criteria in subsection (A)(1);
6. If an out-of-state entity applies for a license, the out-of-state entity shall hold the license through an agent who meets the standard described in A.R.S. § 4-202(A).

B. An entity organized outside the U.S. that applies for an out-of-state producer or limited out-of-state producer license is not required to meet the pre-requisites in subsection (A) if the person makes application through an agent who meets the criteria listed in A.R.S. § 41-1080(B).

C. The Department shall accept as evidence that an individual is a citizen of the United States or a legal resident alien the documents listed in A.R.S. § 41-1080(A).

D. The Department shall accept a driver license or voter registration card as evidence that an individual is a bona fide resident of Arizona.

E. The Department shall accept the following, provided by or filed with the Arizona Corporation Commission, as evidence that an entity is qualified to do business in Arizona:

1. Corporation file number, or
2. L.L.C. file number.

F. This Section is authorized by A.R.S. §§ 4-202(A) and 41-1080.

Historical Note

Former Rule 1; Former Section R4-15-20 renumbered as Section R4-15-201 without change effective October 8, 1982 (Supp. 82-5). R-19-1-201 recodified from R4-15-201 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996, as required pursuant to Laws 1996, Ch. 307, § 19 (Supp. 96-4). Historical note corrected for clarification. Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-201 recodified to R19-1-314; new Section R19-1-201 recodified from R19-1-301 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-202. Application Required

A. An individual or entity that wishes to obtain a license or other approval from the Department shall complete and submit to the Department an application using a form that is available from the Department at its office or online.

B. This Section is authorized by A.R.S. §§ 4-201, 4-202, 4-203, 4-203.01, 4-203.04, and 4-228.

Historical Note

Former Rule 2; Former Section R4-15-21 renumbered as Section R4-15-202 without change effective October 8, 1982 (Supp. 82-5). R19-1-202 recodified from R4-15-202 (Supp. 95-1). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-203. Registration of a Retail Agent

A. Pre-requisites for registration as a retail agent. A person may act as a retail agent only if the person:
1. Holds one of the licenses listed in A.R.S. § 4-222(A);
2. Has a written Cooperative-purchase Agreement, using a form available from the Department, with one or more licensees; and
3. Submits the materials required under subsections (B) and (C) to the Department.

B. To register as a retail agent, a licensee shall submit to the Department the application form prescribed by the Department. The licensee registering shall include the licensee's notarized signature affirming that the licensee will comply with all laws and this Chapter regarding cooperative purchases and that all information provided is true, correct, and complete.

C. In addition to submitting the application form required under subsection (B), an applicant for registration as a retail agent shall submit:
1. A copy of every Cooperative-purchase Agreement reached with another licensee, and
2. The fee prescribed at A.R.S.§ 4-222(B).

D. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d) and 4-222.

Historical Note

Former Rule 3; Former Section R4-15-22 renumbered as Section R4-15-203 without change effective October 8, 1982 (Supp. 82-5). R19-1-203 recodified from R4-15-203 (Supp. 95-1). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-204. Obtaining a Quota License

A. The number of quota licenses that the Department may issue in a county is limited.

B. Before issuing a new quota license in a particular county, the Department shall provide notice through available media of its intent to issue a new quota license, the particular kind of quota license to be issued, and invite interested persons in the county to inform the Department of their interest in the manner prescribed by the Department.

C. If the number of interested persons in a particular county exceeds the number of specified quota licenses available, the Department shall use a random selection method to determine priority of individuals who have applied for a new quota license.

D. Before a new quota license is issued to a successful applicant, the applicant shall pay:

1. The issuance fee and applicable surcharges prescribed under A.R.S. § 4-209;
2. One-half of the annual renewal fee if the license will be issued less than six months before it is scheduled to be renewed; and
3. The fair market value of the quota license, as determined by the Department.

E. This Section is authorized by A.R.S. § 4-206.01.

Historical Note

Former Rule 4; Amended effective September 10, 1979 (Supp. 79-5). Former Section R4-15-23 renumbered as Section R4-15-204 without change effective October 8, 1982 (Supp. 82-5). R19-1-204 recodified from R4-15-204 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended by exempt rulemaking at 7 A.A.R. 5252, effective November 2, 2001 (Supp. 01-4). Former Section R19-1-204 recodified to R19-1-210; new Section R19-1-204 recodified from R19-1-220 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-205. Requirements for a Special Event License

A. To apply for a special event license, an entity authorized under A.R.S. § 4-203.02 (B) shall submit to the Department an application form, which is available from the Department.

B. At the same time application is made to the Department under subsection (A), the entity shall submit a copy of the application form to the board of supervisors if the special event is to be held in an unincorporated area or to the governing body of a city or town if the special event is to be held in a city or town. The Department shall issue a special event license subject to the approval of the board of supervisors or governing body.

C. The Department shall issue a special event license to an entity authorized under A.R.S. § 4-203.02 (B) for no more than 10 days in each calendar year.

D. This Section is authorized by A.R.S. § 4-203.02.

Historical Note

Former Rule 5; Former Section R4-15-24 renumbered as Section R4-15-205 without change effective October 8, 1982 (Supp. 82-5). R19-1-205 recodified from R4-15-205 (Supp. 95-1). Former Section R19-1-205 recodified to R19-1-211; new Section R19-1-205 recodified from R19-1-253 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006
(Supp. 06-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-206. Criteria for Issuing a Restaurant License

A. The Department shall not issue a restaurant license to an applicant if the Department finds there is sufficient evidence that the applicant will be unable to operate as a restaurant as defined at A.R.S. § 4-205.02(H)(2).

B. The following criteria are evidence of an ability to operate a restaurant as defined at A.R.S. § 4-205.02(H)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:

1. Number of cooks, other food preparation personnel, and wait staff are sufficient to prepare and provide the proposed restaurant services;
2. Restaurant equipment is of sufficient grade or appropriate for the offered menu;
3. Proposed menu is of a type and price likely to achieve 40 percent food sales; and
4. Dinnerware and small-ware, including dining utensils, are compatible with the offered menu.

C. The following criteria are evidence of an inability to operate a restaurant as defined at A.R.S. § 4-205.02(H)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:

1. More than 60 percent of the public seating area consists of barstools, cocktail tables, and similar seating indicating the area is used primarily for consumption of spirituous liquor;
2. Name, signage, or promotional materials of the proposed business premises contain a term such as bar, tavern, pub, spirits, club, lounge, cabaret, or saloon that denotes sale of spirituous liquor;
3. Proposed business premises has a jukebox, live entertainment, or dance floor; and
4. Proposed business premises contain bar games and equipment.

D. This Section is authorized by A.R.S. § 4-205.02(E).

Historical Note

Former Rule 6; Former Section R4-15-25 renumbered as Section R4-15-206 without change effective October 8, 1982 (Supp. 82-5). Section repealed, new Section adopted effective May 26, 1993, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1993, Ch. 133, § 49 (Supp. 93-2). R19-1-206 recodified from R4-15-206 (Supp. 95-1). Former Section R19-1-206 recodified to R19-1-221; new Section R19-1-206 recodified from R19-1-217 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-207. Extension of Premises

A. A licensee shall ensure that no spirituous liquor is served to a customer seated outside the licensed premises, as defined at A.R.S. § 4-101(26), without first making application for an extension of premises.

B. An application under subsection (A) is required for either a temporary or permanent extension of premises.

C. This Section is authorized by A.R.S. §§ 4-101(26) and 4-203(B).

Historical Note

Former Rule 7; Former Section R4-15-26 renumbered as Section R4-15-207 without change effective October 8, 1982 (Supp. 82-5). R19-1-207 recodified from R4-15-207 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). New Section R19-1-207 recodified from R19-1-221 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-208. Notice of Application for a Conveyance License

A. An individual or entity qualified under R19-1-201 who submits an application under R19-1-202 for a conveyance license shall post a copy of the application and the notice required under A.R.S. § 4-201(B) conspicuously at the location from which the applicant conducts its principal business in Arizona.

B. This Section is authorized by A.R.S. § 4-201(B).

Historical Note

Former Rule 8; Former Section R4-15-27 renumbered as Section R4-15-208 without change effective October 8, 1982 (Supp. 82-5). R19-1-208 recodified from R4-15-208 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996, as required pursuant to Laws 1996, Ch. 307, § 19 (Supp. 96-4). Historical note corrected for clarification. Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-208 recodified to R19-1-219; new Section R19-1-208 recodified from R19-1-231 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section

repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-209. Licensing Time-frames

A. For the purpose of compliance with A.R.S. § 41-1073, the Department establishes time-frames that apply to licenses issued by the Department. The licensing time-frames consist of an administrative completeness review time-frame, a substantive review time-frame, and an overall time-frame as defined in A.R.S. § 41-1072.

B. The Department shall not forward a liquor license application for review and consideration by local governing authorities until the application is administratively complete. A liquor license application is administratively complete when:

1. Every piece of information required by the form prescribed by the Department is provided;
2. All required materials specified on the form prescribed by the Department are attached to the form;
3. The non-refundable license application fee specified at A.R.S. § 4-209(A) is attached to the form; and
4. If required, a questionnaire and complete set of fingerprints are attached to the form from:
   a. Every individual who is a controlling person of the business to be licensed,
   b. Every individual who has an aggregate beneficial interest of at least 10 percent in the business to be licensed,
   c. Every individual who owns at least 10 percent of the business to be licensed,
   d. Every individual who holds a beneficial interest of at least 10 percent of the liabilities of the business to be licensed, and
   e. The agent and managers of the business to be licensed.

C. Except as provided in subsection (D), the time-frame for the Department to act on a license application is as follows:

1. Administrative completeness review time-frame: 75 days;
2. Substantive review time-frame: 30 days; and
3. Over-all time-frame: 105 days.

D. The time-frame for the Department to act on an application for a special event license, wine festival or fair license, extension or change of licensed premises, or approval of a liquor law training course is as follows:

1. Administrative completeness review time-frame: 10 days;
2. Substantive review time-frame: 20 days; and
3. Over-all time-frame: 30 days.

E. Administrative completeness review time-frame.

1. The administrative completeness review time-frame begins when the Department receives an application. During the administrative completeness review-time-frame, the Department shall determine whether the application is:
   a. Complete,
   b. Contains a technical error, or
   c. Contains a non-technical error.
2. If the Department determines that an application is incomplete or contains a non-technical error, the Department shall return the application to the applicant. If the applicant wishes to be considered further for a license, the applicant shall submit to the Department a new, completed application and non-refundable application fee.
3. If the Department determines that an application contains a technical error, the Department shall notify the applicant in writing of the technical error.
4. An applicant that receives a notice regarding a technical error in an application shall correct the technical error within 30 days from the date of the notice or within the time specified by the Department. The administrative completeness review and over-all time-frames are suspended from the date of the notice referenced under subsection (E)(3) until the date the technical error is corrected.
5. If an applicant fails to correct a technical error within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.

F. Substantive review time-frame.

1. The substantive review time-frame begins when an application is administratively complete or at the end of the administrative completeness review time-frame listed in subsection (C)(1) or (D)(1). If a hearing is required under A.R.S. § 4-201 regarding the license application, the Department shall ensure that the hearing occurs during the substantive review time-frame.
2. If the Department determines during the substantive review that additional information is needed, the Department shall send the applicant a comprehensive written request for additional information. An applicant from whom additional information is requested shall supply the additional information within 30 days from the date of the request or within the time specified by the Department. Both the substantive review and over-all time-frames are suspended from the date of the Department's request until the date that the Department receives the additional information.
3. If an applicant fails to submit the requested information within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.

G. Within the overall time-frame, the Department shall:

1. Deny a license to an applicant if the Department determines that the applicant does not meet all the substantive criteria required by A.R.S. Title 4 and this Chapter, or
2. Grant a license to an applicant if the Department determines that the applicant meets all the substantive criteria required by A.R.S. Title 4 and this Chapter.

H. If the Department denies a license under subsection (G)(1), the Department shall provide a written notice of denial to the applicant that explains:

1. The reason for the denial, with citations to supporting statutes or rules;
2. The applicant's right to appeal the denial; and
3. The time for appealing the denial.

I. This Section is authorized by A.R.S. §§ 41-1073, 4-101(9), 4-201(E), and 4- 202(B).

Historical Note

Former Rule 9; Former Section R4-15-28 renumbered as Section R4-15-209 without change effective October 8, 1982 (Supp. 82-5). R19-1-209 recodified from R4-15-209 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-209 recodified to R19-1-232; new Section R19-1-209 recodified from R19-1-210 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 3. LICENSEE RESPONSIBILITIES

R19-1-302. Knowledge of Liquor Law; Responsibility

A. A licensee shall take reasonable steps to ensure the following individuals acquire knowledge of A.R.S. Title 4 and this Chapter:

1. The licensee;
2. The manager;
3. Any employee who serves, sells, or furnishes spirituous liquor to a retail customer; and
4. Any individual who will be physically present and operating the licensed premises.

B. This Section is authorized by A.R.S. § 4-112(G)(2).

R19-1-303. Authorized Spirituous Liquor

A. A licensee shall not directly or indirectly manufacture, sell, or deal in spirituous liquor in Arizona other than the spirituous liquors authorized by the license issued to the licensee under A.R.S. Title 4 and this Chapter.

B. A licensee shall ensure that no spirituous liquor other than the spirituous liquors authorized by the license issued to the licensee under A.R.S. Title 4 and this Chapter is on the licensed premises for any purpose.

C. This Section is authorized by A.R.S. § 4-203(B)(1).

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Adopted by final rulemaking at 5 A.A.R. 386, effective January 8, 1999 (Supp. 99-1). Former Section R19-1-303 recodified to R19-1-317; new Section R19-1-303 recodified from R19-1-242 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-304. Storing Spirituous Liquor on Unlicensed Premises

A. Except as provided in subsection (B), a licensee shall not accept delivery of or store spirituous liquor at any premises other than the business premises described on the license issued to the licensee under A.R.S. Title 4 and this Chapter.

B. The Department shall authorize a licensee to accept delivery of or store spirituous liquor at a premises other than the business premises described on the license issued to the licensee under A.R.S. Title 4 and this Chapter if:

1. The licensee submits a written request to the Department that:
   a. Identifies the unlicensed premises,
   b. Provides a diagram that shows the geographical location of the unlicensed premises in relation to the business premises, and
   c. Explains how the licensee will safeguard the spirituous liquor at the unlicensed premises; and
2. The Department determines that the licensee will safeguard the spirituous liquor at the unlicensed premises in a manner that protects the public health, safety, and welfare and that authorizing the licensee to store spirituous liquor at the unlicensed premises is consistent with the best interest of the state.

C. A licensee granted authorization under subsection (B) shall provide evidence of the authorization to a wholesaler before asking the wholesaler to make delivery of spirituous liquor at the unlicensed premises.

D. This Section is authorized by A.R.S. § 4-203(B).

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-304 recodified to R19-1-316; new Section R19-1-304 recodified from R19-1-257 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-305. Paying Taxes Required

A. The Director shall not issue an interim permit on a quota license if the Director has notice that the quota-license licensee is delinquent in paying any tax to the state or a political subdivision unless:

1. The licensee or transferee enters into an agreement with the taxing authority to pay the delinquent tax; and
2. The taxing authority submits written verification of the agreement to the Director.

B. This Section is authorized by A.R.S. §§ 4-112(B)(1)(c), 4-205.04(E), and 4-210(A)(5).

Historical Note

Adopted effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Amended effective November 24, 1998, under an exemption from provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 259, § 23 (Supp. 98-4). Former Section R19-1-305 recodified to R19-1-233; new Section R19-1-305 recodified from R19-1-218 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-306. Bottle Labeling Requirements

A. A licensee and any officer, director, agent, or employee of the licensee shall not directly or indirectly or through an affiliate sell, ship, deliver for sale or shipment, or receive or remove from federal custody any bottled spirituous liquor unless the spirituous liquor is bottled, packaged, and labeled in conformity with all federal requirements.

B. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note

New Section R19-1-306 recodified from R19-1-219 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-307. Bottle Reuse or Refilling Prohibited

A. Except as authorized under A.R.S. § 4-244(32), a retail licensee shall ensure that a bottle or other container authorized by law for packaging spirituous liquor:

1. Is not reused to package spirituous liquor after the spirituous liquor originally packaged in the bottle or other container is removed from the bottle or other container, and
2. Bears a label that accurately indicates the kind and brand of spirituous liquor in the bottle or other container.

B. Except as authorized under A.R.S. § 4-244(32) and (45), a retail licensee shall ensure that no substance is added to a bottle or other container authorized by law for packaging spirituous liquor that has the effect of increasing the amount of liquid originally packaged or remaining in the bottle or other container.

C. This Section is authorized by A.R.S. § 4-244(21), (32), and (45).

Historical Note

New Section R19-1-307 recodified from R19-1-225 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-308. Age Requirement for Erotic Entertainers

A. A licensee shall ensure that an individual employed by or performing as an erotic entertainer at the licensed premises is at least 19 years old.

B. This Section is authorized by A.R.S. § 4-112(G)(6).

Historical Note

New Section R19-1-308 recodified from R19-1-243 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-309. Prohibited Acts

A. A licensee or an employee of a business shall take reasonable steps to ensure that an individual on the licensed premises, including an employee or independent contractor of the licensed premises, does not:

1. Expose any portion of the individual's anus, vulva, or genitals;
2. Grope, caress, or fondle or cause to be groped, caressed, or fondled the breasts, anus, vulva, or genitals of another individual with any part of the body; or
3. Perform an act of sexual intercourse, masturbation, sodomy, bestiality, or oral copulation.

B. This Section is authorized by A.R.S. § 4-112(B)(1)(b).

Historical Note

New Section R19-1-309 recodified from R19-1-244 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-310. Prohibited Films and Pictures

A. A licensee shall ensure that a film, slide picture, or other reproduction is not shown on the licensed premises if the film, slide picture, or other reproduction depicts:

1. An act of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, or a sexual act prohibited by law;
2. An individual being touched, caressed, or fondled on the breast, anus, vulva, or genitals;
3. An individual displaying a portion of the individual's pubic hair, anus, vulva, or genitals; or
4. Use of an artificial device or inanimate object to depict an activity described under subsections (1) through (3).

B. This Section is authorized by A.R.S. § 4-112(B)(1)(b).

Historical Note

New Section R19-1-310 recodified from R19-1-240 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-312. Accurate Labeling of Dispensing Equipment Required

A. A licensee shall ensure that equipment through which spirituous liquor is dispensed is accurately labeled with the brand, grade, or class of spirituous liquor, including wine and beer, dispensed and that nothing on the equipment label directly or indirectly misleads the public regarding the spirituous liquor dispensed, sold, or used.

B. Except as provided in subsection (C), a licensee shall ensure that a faucet, spigot, or other outlet from which spirituous liquor is dispensed is clearly and conspicuously labeled with the name or brand adopted by the manufacturer of the spirituous liquor being dispensed.

C. If a faucet, spigot, or other outlet from which spirituous liquor is dispensed is not located in the area in which the spirituous liquor is served, a licensee shall post a notice in the area in which the spirituous liquor is served that lists the names or brands adopted by the manufacturers of only the spirituous liquors served.

D. This Section is authorized by A.R.S. § 4-243.

Historical Note

New Section R19-1-312 recodified from R19-1-223 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-314. Prohibited Inducement to Purchase or Consume Spirituous Liquor

A. Except as specified in subsection (B), an on-sale retailer shall not offer or furnish to a customer an inducement such as a gift, prize, coupon, premium, or rebate, including assumption of an excise or transaction privilege tax, if receipt of the inducement is contingent on the purchase or consumption of spirituous liquor.

B. A bar or beer and wine bar licensee may offer or furnish a coupon to a customer if the coupon can be used only for an off-sale purchase.

C. An on-sale retailer may furnish to a customer an advertising novelty of nominal value or a service that is a customary trade practice if receipt of the novelty or service is not contingent on the purchase or consumption of spirituous liquor.

D. This Section is authorized by A.R.S. § 4-112(B)(1).

Historical Note

New Section R19-1-314 recodified from R19-1-201 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006 (Supp. 06-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-315. Responsibilities of a Licensee that Operates a Delivery Service

A. A licensed retailer that operates a delivery service under A.R.S. § 4-203(J) or a licensed domestic farm winery that delivers wine under A.R.S. § 4-205.04(C)(9) shall ensure that delivery of spirituous liquor:
1. Is made only to an individual who is at least 21 years old,
2. Is made only after an inspection of identification shows that the individual accepting delivery of the spirituous liquor is of legal drinking age,
3. Is made only during the hours of lawful service of spirituous liquor,
4. Is not made to an intoxicated or disorderly individual, and
5. Is not made to the licensed premises of a licensed retailer.

B. A licensed retailer that operates a delivery service under A.R.S. § 4-203(J) or a licensed domestic farm winery that delivers wine under A.R.S. § 4-205.04(C)(9) shall refuse to complete a delivery if the licensee believes the delivery may constitute a violation of A.R.S. Title 4 or this Chapter.

C. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), and 4-205.04(C)(9) and (D).

Historical Note

New Section R19-1-315 recodified from R19-1-302 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section renumbered to R19-1-113, new Section R19-1-315 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-316. Responsibilities of a Liquor Store or Beer and Wine Store Licensee

A. Except for a broken package, as defined at A.R.S. § 4-101, used in sampling conducted under A.R.S. § 4-206.01(J), 4-243(B)(3) or 4-244.04, a liquor store or beer and wine store licensee shall not have a broken package of spirituous liquor on the licensed premises.

B. This Section is authorized by A.R.S. § 4-244(19).

Historical Note

New Section R19-1-316 recodified from R19-1-304 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-317. Responsibilities of a Hotel-Motel or Restaurant Licensee

A. If a hotel-motel or restaurant licensee ceases to provide complete restaurant services before 10:00 p.m., the licensee shall cease to sell spirituous liquor at the same time that the licensee ceases to provide complete restaurant services.

B. If a hotel-motel or restaurant licensee provides complete restaurant services until at least 10:00 p.m., the licensee may continue to sell spirituous liquor during the hours allowed by law.

C. If a hotel-motel or restaurant licensee refuses to serve a meal requested before 10:00 p.m. and continues to serve spirituous liquor, the Department shall assume that the hotel-motel or restaurant licensee has ceased to operate as a restaurant and has the primary purpose of selling or dispensing spirituous liquor for consumption.

D. In the event of an audit to determine whether a hotel-motel or restaurant licensee meets the standard at A.R.S. § 4-205.02(H), the licensee shall submit records that enable the Department to determine the amount of gross revenue that the licensee derives from the sale of food and from the sale of spirituous liquor. If the Department is unable to determine the amount of gross revenue attributed to the sale of food, the Department shall assume that the licensee does not meet the standard at A.R.S. § 4-205.02(H).

E. To ensure that the Department is able to determine the amount of gross revenue derived from the sale of food and from the sale of spirituous liquor, a hotel-motel or restaurant licensee shall maintain the majority of the following documents in the following order for the time specified in R19-1-501:
1. Vendor invoices. Sorted by vendor by year;
2. Inventory records; financial statements; general ledger; sales journals or schedules; cash receipts or disbursement journals; and bank statements. Sorted by month by year;
3. Daily sales report, guest checks, and cash register journal. Segregated by the sale of food and the sale of spirituous liquor and sorted by day by month by year;
4. Bank deposit slips. Sorted by day by month by year and maintained with the daily sales report, guest checks, and cash register journal;
5. Transaction privilege tax returns. Sorted by month by year;

6. Income tax returns. Sorted by year; and
7. Payroll records. Sorted by pay period by year.

F. If a licensee holds multiple licenses for business premises, one of which is for a hotel-motel or restaurant, the licensee shall ensure that records for purchases and sales for the hotel-motel or restaurant are maintained and accounted for separate from records for purchases and sales for the other license on the same premises.

G. This Section is authorized by A.R.S. §§ 4-205.01 and 4-205.02.

Historical Note

New Section R19-1-317 recodified from R19-1-303 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-318. Responsibilities of a Special Event Licensee

A. If a special event occurs at an otherwise unlicensed location, the special event licensee shall conduct all dispensing, serving, and selling of spirituous liquor;

B. If a special event occurs at the licensed premises of a licensed retailer, the special event licensee shall ensure that one of the following occurs during the special event:

1. The licensed retailer places the license in non-use status and ceases to sell spirituous liquor and the special event licensee dispenses and serves spirituous liquor and ensures that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter;
2. The licensed retailer dispenses and serves all spirituous liquor under the licensed retailer's license and the special event licensee does not dispense or serve spirituous liquor. The licensed retailer shall dispense and serve only spirituous liquor purchased from a wholesaler and ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter;
3. The licensed retailer dispenses and serves all spirituous liquor under the special event license and the special event licensee does not dispense or serve spirituous liquor. The licensed retailer shall dispense and serve only spirituous liquor purchased by or donated to the special event licensee. Both the licensed retailer and special event licensee shall ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter; or
4. The licensed premises of the licensed retailer are divided into two areas as follows:
   a. In the first area, the licensed retailer shall dispense and serve spirituous liquor that is purchased from a wholesaler and ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter; and
   b. In the second area, the special event licensee shall dispense and serve spirituous liquor purchased by or donated to the special event licensee and ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter.

C. If a special event involving sampling of spirituous liquor occurs at the licensed premises of a licensed retailer, the special event licensee shall comply with the procedures in A.R.S. § 4-243(B).

D. This Section is authorized by A.R.S. §§ 4-112(B)(1)(b) and 4-203.02(E).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-319. Commercial Coercion or Bribery Prohibited

A. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not directly or indirectly or through an affiliate engage in any of the following activities unless specifically authorized under A.R.S. Title 4 or this Chapter:

1. Furnishing, giving, renting, lending, or selling to a licensed retailer an article of primary utilitarian value in the conduct of the business;
2. Selling food or food products to a licensed retailer at less than the cost that the producer or wholesaler paid for the food or food products;

3. Selling non-alcoholic malt beverage, non-alcoholic wine, or other non-alcoholic beverage or cocktail mixer to a licensed retailer at less than the cost that the producer or wholesaler paid for the non-alcoholic malt beverage, non-alcoholic wine, or cocktail mixer.
4. Extending credit or furnishing financing to a licensed retailer through the licensed retailer's purchase of spirituous liquor or other products;
5. Providing a service to a licensed retailer, including stocking, resetting, or pricing merchandise;
6. Paying or crediting a licensed retailer for a promotion, advertising, display, public relations effort, or distribution service;
7. Sharing with a licensed retailer the cost of a promotion or advertising through any medium;
8. Guaranteeing a loan to or repayment of a financial obligation of a licensed retailer;
9. Providing financial assistance to a licensed retailer;
10. Engaging in a practice that requires a licensed retailer to take and dispose of a quota of spirituous liquor;
11. Offering or giving a meal, local ground transportation, or event ticket to a licensed retailer unless the item is deductible as a business entertainment expense under the Internal Revenue Code;
12. Offering a product to an on-sale licensee at a price not available to all on-sale licensees. A price based on the volume delivered within a 24-hour period is permitted if the volume-based price is available to all on-sale licensees; or
13. Offering a product to an off-sale licensee at a price not available to all off-sale licensees. A price based on the volume delivered within a 24-hour period is permitted if the volume-based price is available to all off-sale licensees.

B. A licensed retailer shall not require that a producer or wholesaler provide stocking or resetting services as a condition for being allocated shelf, cold box, or product display space.

C. A licensed retailer shall not solicit from a distiller, vintner, brewer, rectified, blender, or other producer or wholesaler any activity outlined in subsections (A)(1) through (A)(13) unless specifically authorized under A.R.S. Title 4 or this Chapter.

D. This Section is authorized by A.R.S. § 4-243(A).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-320. Practices Permitted by a Producer or Wholesaler

A. In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Chapter 1, Subchapter A, the practices outlined in subsections (B) through (Q) allow a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the producer or wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of another producer or wholesaler. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Chapter 1, Subchapter A, or this Chapter. If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A and this Chapter, this Chapter governs.

B. A licensed retailer shall not solicit or knowingly accept from a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler any activity not outlined in subsections (C) through (Q) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.

C. Participating in a special event.

1. A producer or wholesaler may furnish advertising, sponsorship, services, or other things of value at a special event at which spirituous liquor is sold if:

   a. A special event license is issued for the special event. A producer or wholesaler shall not pay for advertising, sponsorship, services, or other things of value until the wholesaler or producer confirms that a special event application has been submitted for approval under A.R.S. § 4-203.02;

   b. The special event license is issued to a charitable, civic, religious, or fraternal organization;

   c. The special event license is not issued to a political committee or organization;

   d. The producer or wholesaler ensures that nothing of value given to a licensed retailer or employees of a licensed retailer during or after the special event is left on the licensed premises of a licensed retailer except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D); and

   e. The producer or wholesaler pays financial sponsorship, if any, to the organization to which the special event license is issued.

2. A producer or wholesaler may donate spirituous liquor to a special event licensee identified under subsection (C)(1)(b).

3. A producer or wholesaler may dispense spirituous liquor donated by the producer or wholesaler at a special event.

4. A producer or wholesaler may provide a sign to a special event licensee identified under subsection (C)(1)(b). If the producer or wholesaler provides a sign to a special event licensee, the sign is not subject to R19-1-313.

5. A producer or wholesaler may furnish a vehicle for use by a special event licensee identified under subsection (C)(1)(b). The producer or wholesaler shall ensure the vehicle is used to dispense spirituous liquor only during the days of the special event.

D. Providing an item of value to a customer of a licensed retailer. A producer or wholesaler or its employee or independent contractor may provide an item of value to a customer of a licensed retailer if:

1. The item is provided directly to the customer of the licensed retailer by the producer or wholesaler or an employee or independent contractor of the producer or wholesaler except that a schedule of sporting events, as defined in subsection (F), may be provided to the customer through the licensed retailer;

2. The item provided has a value less than $5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler may provide an unlimited number of items;

3. The item provided has a value more than $5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler shall ensure that the total value of all items provided does not exceed $100 during any 6:00 a.m. to 2:00 a.m. period per licensed premises; and

4. The producer or wholesaler ensures that no item of value is provided to the licensed retailer or an employee of the licensed retailer or is left on the licensed premises.

E. Furnishing advertising. A producer or wholesaler may furnish advertising copy in the form of a digital file or camera- or internet-ready images of nominal value to a licensed retailer.

F. Sponsoring a sporting event. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily for live sporting events, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a live sporting event or telecast of a sporting event at the licensed premises. If the producer or wholesaler provides a sign as part of the sponsorship of a sporting event, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure no item of value remains with the licensed retailer or at the licensed premises after the sporting event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D). For the purpose of this subsection, live sporting event means an athletic competition governed by a set of rules or customs to which pre-sold tickets are made available to the public. For nationally recognized sporting events that are seasonal, including but not limited to baseball, football, basketball, soccer, and NASCAR, the conclusion of a live sporting event occurs when the season ends rather than after each individual event of the season. A golf tournament is not a live sporting event unless:

1. The golf tournament is regulated by a golf association; or

2. The golf tournament is held for the benefit of an unlicensed organization and the sponsoring producer or wholesaler ensures that:

   a. All sponsorship proceeds are provided to the unlicensed organization, and

   b. Nothing of utilitarian value or other consideration is provided to a licensed retailer.

G. Sponsoring a concert. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily as a concert or live sporting event venue, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a concert at the licensed premises. For the purpose of this subsection, “concert” is a live event with pre-sold tickets for a musical, vocal, theatrical, or comedic performance at the licensed premises or a live musical, vocal, theatrical, or comedic performance at the licensed premises that is not open to the public. If the producer or wholesaler provides a sign as part of the sponsorship of a concert, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure that no item of value remains with the licensed retailer or at the licensed premises after the conclusion of the concert event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

H. Participating in a tradeshow or convention. A producer or wholesaler may provide for a licensee sampling, advertising, and event sponsorship to a trade association in conjunction with a tradeshow or convention if the trade association consists of five or more retail licensees that have no common ownership. If the producer or wholesaler provides a sign as part of the sponsorship of a tradeshow or convention, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure the sign is physically placed at the location where the tradeshow or convention is held. The producer or

wholesaler shall remove the sign within one business day after the conclusion of the tradeshow or convention and ensure that no item of value remains with the licensed retailer after the conclusion of the tradeshow or convention event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D)..

I. Participating in an educational seminar. A producer or wholesaler may participate in an educational seminar for employees of a licensed retailer if:

1. The educational seminar occurs on the licensed premises of a producer, wholesaler, or retailer;
2. Content of the educational seminar is substantially related to spirituous liquor available from the producer or wholesaler;
3. Lodging and transportation expenses incurred by employees of the licensed retailer or the licensed retailer to attend the educational seminar are not paid or reimbursed by the producer or wholesaler. The producer or wholesaler may provide a meal and snacks of nominal value to participants in the education seminar;
4. The retailer's expenses associated with organizing, producing, or hosting the educational seminar are not paid or reimbursed by the producer or wholesaler; and
5. No item of value remains with the licensed retailer after the conclusion of the educational seminar event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

J. Furnishing a printed menu. A producer or wholesaler may furnish a printed menu for use by a retailer if:

1. All printed menus furnished to the licensed retailer during a calendar year have a fair market value within the limit prescribed by A.R.S. § 4-243(D),
2. A similar menu is made available to all retail accounts that use menus,
3. The menu has no utilitarian value to the licensed retailer except as a menu, and
4. The menu conspicuously bears the name of spirituous liquor available from the producer or wholesaler or the name of the producer or wholesaler.

K. Distributing coupons or rebates. A producer or wholesaler may distribute coupons or rebates to consumers by any means including providing the coupons or rebates to a licensed retailer if the coupons or rebates:

1. Can be used only for an off-sale purchase by the consumer from a licensed retailer,
2. Do not specify a licensed retailer at which the coupons or rebates are required to be used, and
3. Are available in approximately the same number of qualifying products the licensed retailer has available for customers if the coupons or rebates are ultimately redeemed by the licensed retailer.

L. Providing holiday decorations. A producer or wholesaler may lend decorations commonly associated with a specific holiday to a licensed retailer for use on the licensed premises if the decorations:

1. Bear advertising about a brand, producer, or wholesaler that is substantial, conspicuous, and permanently inscribed or securely affixed; and
2. The decorations have no utilitarian value to the licensed retailer other than as decorations for a specific holiday.

M. Providing a sample to a customer of a licensed retailer. A producer or wholesaler may provide a sample of spirituous liquor to a customer of a licensed:

1. On-sale retailer without off-sale privileges if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(2)(b), which limit sampling to 12 ounces of beer or cooler product, six ounces of wine, or two ounces of distilled spirits per person, per brand to be consumed on the licensed premises;

2. Off-sale retailer if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(3)(c), which limit sampling to three ounces of beer, one and one-half ounces of wine, or one ounce of distilled spirits per person, per day. If the sample provided is for off-sale consumption, the producer or wholesaler shall ensure the sample is in an unbroken package; or

3. On-sale retailer with off-sale privileges if the producer or wholesaler complies with subsection (M)(1) when providing samples under the on-sale portion of the license and subsection (M)(2) when providing samples under the off-sale portion of the license.

N. Conducting market research. A producer or wholesaler may participate in market research regarding spirituous liquor under the following conditions:

1. The spirituous liquor is provided to research participants by personal delivery or through a delivery service provider;

2. The spirituous liquor provided to research participants is obtained from or shipped through a wholesaler;

3. All research participants are of legal drinking age;

4. Any employee of the producer or wholesaler and any employee of a marketing research business conducting the market research that handles the spirituous liquor is at least 19 years old; and

5. The amount of spirituous liquor provided to each research participant does not exceed 72 ounces of beer, cooler product, or wine or 750 milliliters of distilled spirits.

O. Providing a sample to a licensed retailer. A producer or wholesaler may provide a licensed retailer with a sample of a brand of spirituous liquor that the licensed retailer has not purchased for sale within the last 12 months if the sample does not exceed the following:

1. Wine. Three liters;

2. Beer. Three gallons; and

3. Distilled spirits. Three liters.

P. Providing a shelf plan or schematic. A producer or wholesaler may provide a recommended shelf plan or schematic for use by a licensed retailer in displaying spirituous liquor or other product in a point-of-sale area.

Q. Providing meals, beverages, event tickets, and local ground transportation. Except as provided under subsection (I), a producer or wholesaler may provide a licensed retailer with meals, beverages, event tickets, and local ground transportation if:

1. The producer or wholesaler accompanies the licensed retailer while meals and beverages are consumed and ground transportation is used; and

2. The value of the meals, beverages, event tickets, and local ground transportation is deductible as a business entertainment expense under the Internal Revenue Code.

R. A producer or wholesaler that sells spirituous liquor to another producer or wholesaler is exempt from the credit prohibition in A.R.S. § 4-242.

S. Section is authorized by A.R.S. §§ 4-242, 4-243 and 4-244(3).

R19-1-321. Practices Permitted by a Wholesaler

A. In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Chapter 1, Subchapter A, the following practices allow a wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the wholesaler to the exclusion, in whole or in part, of another wholesaler. A wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Chapter 1, Subchapter A, or this

Chapter. If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A and this Chapter, this Chapter governs.

B. A licensed retailer shall not solicit or knowingly accept from a wholesaler any activity not outlined in subsections (C) through (N) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.

C. Providing stocking services. A wholesaler may stock any spirituous liquor or other product that the wholesaler sells to a licensed retailer. The stocking service provided by a wholesaler:

1. Shall not alter or disturb any spirituous liquor or other product of another wholesaler;
2. Shall be performed at a point-of-sale area, including a cold box, from which a consumer may purchase spirituous liquor sold by the retailer. A wholesaler may move spirituous liquor to or from the following locations on the licensed premises:
   a. A designated delivery entrance, and
   b. A storage area; and
3. May include:
   a. Rotating, cleaning, or otherwise preparing the spirituous liquor or other product for sale at a point-of-sale area; and
   b. Furnishing advertising materials displayed at a point-of-sale area as authorized under R19-1-313.

D. Providing resetting services. A wholesaler may reset spirituous liquor sold to a licensed retailer if requested by the licensed retailer and the resetting does not alter or disturb the product of another wholesaler. The resetting services provided by a wholesaler:

1. Shall be performed only in a point-of-sale area, including a cold box;
2. Shall not be performed unless the retailer provides at least two working days' notice to any other wholesaler whose product needs to be affected so the resetting can be performed; and
3. Shall not be performed more frequently than once per year if the resetting involves a substantial reconfiguration of the spirituous liquor department of a retailer.

E. Furnishing tapping equipment. A wholesaler may furnish tapping equipment under R19-1-326 to a retail licensee.

F. Making a driver sale. A wholesaler may sell to a licensed retailer, through a driver sale, at the current market price, spirituous liquor not previously ordered.

G. Delivering a specially discounted quantity purchase. A wholesaler may provide a licensed retailer with a specially discounted price for a quantity purchase if the wholesaler delivers the entire quantity purchased to an approved storage facility of the licensed retailer.

H. Accepting returned spirituous liquor products.

1. A wholesaler may allow a licensed retailer that intends to be closed for at least 30 days to exchange beer or other malt beverage products purchased from the wholesaler or to receive a credit for or refund of the amount paid for the malt beverage products;
2. With permission from the Director, a wholesaler may allow a licensed retailer that is discontinuing sale of a particular beer or other malt beverage product to exchange the product purchased from the wholesaler or to receive a credit for or refund of the amount paid for the beer or other malt beverage product; and
3. A wholesaler may exchange or accept return of other spirituous liquors as permitted under 27 U.S.C. 205(d) and 27 C.F.R. Subchapter A, Part 11.

I. Selling tobacco products or foodstuffs. A wholesaler may sell tobacco products or foodstuffs to a licensed retailer if the price paid by the retailer equals or exceeds the cost to the wholesaler.

J. Furnishing promotional items. A wholesaler may provide promotional items to an on-sale retailer. Promotional items, as defined and limited by A.R.S. § 4-243(D) does not include spirituous liquor.

K. Facilitating a special event. A wholesaler may facilitate a special event by:

1. Donating spirituous liquor directly to the special event licensee and issuing a net zero cost billing invoice in the name of the special event licensee,
2. Leaving a delivery vehicle and other equipment necessary for the sale or service of spirituous liquor on the premises of the special event for the duration of the special event and up to one business day before and after the special event,
3. Leaving spirituous liquor at the special event if:
   a. The spirituous liquor is properly described on a preliminary billing invoice issued in the names of both the off-sale retailer from which the special event licensee is purchasing the spirituous liquor and the special event licensee,
   b. The wholesaler issues a final billing invoice in the names of both the off-sale retailer from which the special event licensee is purchasing the spirituous liquor and the special event licensee within five business days after the special event ends, and
   c. The spirituous liquor is stored securely to ensure only intended persons gain access to the spirituous liquor; and
4. Selling spirituous liquor directly to the special event licensee at the same price the wholesaler sells the spirituous liquor to on-sale retailers. If the wholesaler sells spirituous liquor directly to the special event licensee, both the preliminary and final billing invoices shall be in the name of the special event licensee.

L. Providing shelves, bins, or racks. A wholesaler may lend a shelf, bin, or rack to a licensed off-sale retailer if the following conditions are met:

1. The shelf, bin, or rack lent to the licensed off-sale retailer is located in a point-of-sale area.
2. The shelf, bin, or rack lent to the licensed off-sale retailer does not have an actual cost of more than $300 per brand, as defined at 27 C.F.R. Subchapter A, Section 6.11, at any one time in the licensed premises. The cost of the shelf, bin, or rack excludes the cost of transporting and installing the shelf, bin, or rack. The wholesaler shall not pool or combine dollar limitations to provide the licensed off-sale retailer with a shelf, bin, or rack that exceeds the dollar limitation in this subsection;
3. The shelf, bin, or rack bears advertising regarding spirituous liquor available from the wholesaler that is conspicuous, substantial, and permanently inscribed or securely affixed. The name and address of the licensed off-sale retailer may appear on the shelf, bin, or rack;
4. The primary function of the shelf, bin, or rack is to hold and display spirituous liquor available from the wholesaler;
5. The spirituous liquor on the shelf, bin, or rack is only the spirituous liquor advertised on the shelf, bin, or rack by the wholesaler. The shelf, bin, or rack may also hold non-spirituous-liquor products that are being promoted or advertised with the spirituous liquor available from the wholesaler; and
6. The shelf, bin, or rack is not temperature controlled.

M. Providing product display enhancers. A wholesaler may lend to a licensed off-sale retailer a non-functional copy or reproduction of an item that enhances the display of spirituous liquor sold from the display.

N. Providing staff assistance. A wholesaler may use its staff to provide a licensed retailer with assistance in performing the activities outlined in this Section. A wholesaler shall not maintain full-time staff or permanently occupy office space on the licensed premises or at the corporate office of a licensed retailer.

O. This Section is authorized by A.R.S. §§ 4-203.02(H) through (J) and 4-243.

R19-1-322. Responsibilities of a Registered Retail Agent

A. A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall provide a licensee that enters into a cooperative-purchase agreement with the registered retail agent a copy of the cooperative-purchase agreement. The licensee shall make the copy of the cooperative-purchase agreement available for inspection on request by the Department or a peace officer.

B. A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall:

1. Display the Certificate of Registration obtained from the Department on request by the Department, a peace officer, or a licensee;
2. Place all cooperative-purchase orders with a wholesaler;
3. Pay the wholesaler for all cooperative-purchase orders;
4. Not attempt to exchange merchandise after it is delivered by the wholesaler but may request that a delivery error be corrected if the error is recognized at the time of delivery and documented;
5. Provide each licensee under subsection (A) with a copy of the master invoice prepared by the wholesaler from which a cooperative purchase is made; and
6. Charge each licensee under subsection (A) the price listed on the master invoice prepared by the wholesaler for spirituous liquor delivered to the licensee.

C. A retail agent registered under A.R.S. § 4-222 and R19-1-203 may charge a licensee with which the registered retail agent has a cooperative-purchase agreement a fee for services provided to the licensee.

D. This Section is authorized by A.R.S. § 4-222.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-323. Underage Individuals on Licensed Premises

A. An individual under the legal drinking age may be on the licensed premises of an on-sale retailer under the conditions established in A.R.S. § 4-244(22).

B. Additionally, an individual under the legal drinking age may be on the licensed premises of an on-sale retailer if:

1. The licensed premises have an occupancy limit of at least 1,000 as determined by the fire marshal;
2. The primary purpose of the licensed premises is not to sell spirituous liquor but rather, to show live sporting events or concerts;
3. The on-sale retailer ensures that spirituous liquor is sold only to individuals who are of the legal drinking age; and
4. The on-sale retailer implements security measures necessary to ensure that an individual under the legal drinking age does not purchase, possess, or consume spirituous liquor on the licensed premises.

C. Additionally, an individual under the legal drinking age may be on the licensed premises of an on-sale retailer if:

1. The licensed premises have an occupancy limit less than 1,000 as determined by the fire marshal;
2. The primary purpose of the licensed premises is not to sell spirituous liquor but rather, to show live sporting events or concerts; and
3. The on-sale retailer establishes a physical barrier that prevents an underage individual from:
   a. Entering a portion of the licensed premises where spirituous liquor is sold, possessed, or served; and
   b. Receiving, purchasing, possessing, or consuming spirituous liquor in that portion of the licensed premises.

D. This Section is authorized by A.R.S. § 4-210(M) and 4-244(22).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-324. Standards for Exemption of an Unlicensed Business

A. The owner of a small restaurant or business establishment, business premises, or association hosting a private social function may act under A.R.S. § 4-244.05 if the owner of the small restaurant or business establishment, business premises, or association hosting a private social function:

1. Submits a Request for Exemption form, which is available from the Department and on its web site;
2. Pays the inspection fee specified in R19-1-102(J); and
3. Ensures that:
   a. Possession or consumption of spirituous liquor on the business premises is permitted only as an incidental convenience to customers;
   b. Possession or consumption of spirituous liquor on the business premises is limited as follows:
      i. Small restaurant: between noon and 10:00 p.m.; and
      ii. Business establishment, business premises, or association hosting a private social function: between 4:00 p.m. and 2:00 a.m.
   c. A customer is allowed to possess or consume no more than:
      i. Forty ounces of beer,
      ii. Seven hundred fifty milliliters of wine, or
      iii. Four ounces of distilled spirits;
   d. The occupancy limitation of the small restaurant or business establishment, business premises, or association hosting a private social function does not exceed the following maximum:
      i. Small restaurant: 50; and
      ii. Business establishment, business premises, or association hosting a private social function: 300; and
   e. The owner, manager, comptroller, controlling person, and any employee of the small restaurant or business establishment, business premises, or association hosting a private social function complies with all applicable provisions of A.R.S. Title 4 and this Chapter.

B. As provided under A.R.S. § 4-244.05 (J)(4), the Director, agent of the Director, or peace officer empowered to enforce A.R.S. Title 4 and this Chapter may visit and inspect a small restaurant, business establishment, business premises, or association operating under A.R.S. § 4-244.05 and this Section during business hours of the premises.

C. This Section is authorized by A.R.S. § 4-244.05.

R19-1-325. Display of Warning Sign Regarding Consumption of Alcohol; Posting Notice Regarding Firearms

A. As prescribed under A.R.S. § 4-261, a licensed retailer shall post one or more warning signs, which are available without charge from the Department, regarding consumption of alcohol during pregnancy.

B. An on-sale retailer that wishes to prohibit possession of a weapon on the licensed premises shall post the notice described in A.R.S. § 4-229, which is available without charge from the Department,:

1. In a conspicuous location accessible to the general public, and
2. Immediately adjacent to the license posted as required under A.R.S. § 4-262 and R19-1-301.

C. This Section is authorized by A.R.S. §§ 4-229, 4-261 and 4-262.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-326. Tapping Equipment

A. A wholesaler may furnish, install, and maintain tapping equipment for a licensed retailer for use with all spirituous liquor. The wholesaler shall maintain ownership of the tapping equipment that is provided free.

B. A wholesaler that sells tapping equipment listed in subsection (C) to a licensed retailer shall maintain a written record of the name and address of the licensed retailer to which the tapping equipment is sold, the equipment sold, and an invoice indicating payment was made. The wholesaler shall make these records available to the Department upon request.

C. A wholesaler may only sell the following items to a licensed retailer for cash at the market value for the items:

1. CO2 or other dispensing gas,
2. CO2 or other dispensing gas regulator,
3. CO2 or other dispensing gas filter,
4. Faucet or complete faucet standard,
5. Shank or bent tube,
6. Air distributor,
7. Blower assembly,
8. Switch;
9. Drip pan,
10. P.V.C. pipe;
11. Sanitizing materials,
12. Backflow device,
13. Coupling gasket,
14. Beer pump,
15. Tower,
16. Trunk line, and
17. Another item necessary to prepare and maintain a tapping-equipment system in proper operating condition.

D. A wholesaler may replace at no charge to a licensed retailer the following items:

1. Bonnet washer;
2. Friction ring;
3. Valve stem;
4. Hardware, unions, clamps, air tees, and screws;
5. Tapping devices, including tower heads; and
6. Single air and beer lines.

E. A wholesaler may clean a tapping-equipment system for a licensed retailer at no charge to the licensed retailer.

F. This Section is authorized by A.R.S. § 4-243(A)(4).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-327. Domestic Farm Winery Sampling

A. A licensed domestic farm winery that conducts sampling of the product of the licensed domestic farm winery on the premises of an off-sale retailer or a retailer with off-sale privileges, as allowed by A.R.S. § 4-244.04, shall ensure that:

1. No more than six ounces of the product of the licensed domestic farm winery is served to each consumer each day,
2. An employee of the licensed domestic farm winery serves or supervises the serving of the product of the licensed domestic farm winery, and
3. There is no violation of A.R.S. Title 4 or this Chapter.

B. As provided in A. R. S. § 4-205.04(C)(2), a licensed domestic farm winery may provide samples of the product of the licensed domestic farm winery on the premises of the domestic farm winery.

C. This Section is authorized by A.R.S. § 4-244.04.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 4. REQUIRED NOTICES TO DEPARTMENT

R19-1-401. Notice of License Surrender or Application Withdrawal

A. A licensee that intends to surrender a license that is not a quota license or an applicant that intends to withdraw an application shall submit to the Department a file deactivation form prescribed by the Department.

B. The Department shall deem a license surrendered if all of the following apply:
1. The licensed premises are vacant during normal operating hours for at least 30 consecutive days;
2. The licensee fails to notify the Department of the licensee's intention to suspend the business authorized by the license, as required under A.R.S. § 4-203;
3. The Department is unable to contact the licensee using information available in the Department's records; and
4. The individual who informs the Department that the licensee has abandoned the license submits to the Department:
   a. The license, if available; and
   b. A signed and notarized statement indicating that to the best of the individual's knowledge, the licensed premises have been vacant during normal operating hours for at least 30 consecutive days and the licensee has abandoned the license and licensed premises.

C. The Department shall deny surrender of a license if the Department determines that:
1. It has notice that the licensee is delinquent in paying taxes to the state or a political subdivision,
2. A complaint is pending against the licensee alleging violation of A.R.S. Title 4 or this Chapter,
3. Ownership of the license is contested,
4. Civil proceedings involving the license are pending before any court, or
5. A hearing is pending before the Board.

D. This Section is authorized by A.R.S. §§ 4-203, 4-203.01, 4-205.02 and 4-210(I).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-402. Registered Retail Agent: Notice of Change in Cooperative-purchase Agreement; List of Cooperative Members

A. As required under A.R.S. § 4-222(A), a retail agent registered under R19-1-203 shall provide written notice to the Department within 10 days after a licensee with whom the registered retail agent has a cooperative-purchase agreement terminates the registered retail agent's authority. The registered retail agent shall ensure that the notice identifies the licensee terminating the cooperative-purchase agreement and shall send a copy of the notice to all affected wholesalers.

B. A retail agent registered under R19-1-203 shall submit to the Department a copy of a new cooperative purchase agreement between the registered retail agent and another licensee within 10 days after entering into the cooperative-purchase agreement.

C. In addition to submitting a copy of each cooperative-purchase agreement to the Department, a retail agent registered under R19-1-203 shall submit to the Department a list that includes the following information regarding each licensee with which the registered retail agent has a cooperative-purchase agreement:
1. Name of licensee,
2. Address of licensed premises, and
3. License numbers of each licensee with which the registered retail agent has a cooperative-purchase agreement.

D. A registered retail agent shall report to the Department a change in any of the information submitted under subsection (C) within 10 days of the change.

E. This Section is authorized by A.R.S. § 4-222.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-403. Hotel-Motel or Restaurant Licensee: Notice of Change to Restaurant Facility

A. Under A.R.S. § 4-205.01(E) or 4-205.02(F), a hotel-motel or restaurant licensee that intends to alter the seating capacity or dimensions of a restaurant facility shall provide advance notice to the Department.

B. To provide the notice required under subsection (A), a hotel-motel or restaurant licensee shall complete and submit to the Department the form prescribed by the Department.

C. This Section is authorized by A.R.S. § 4-205.02(F).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-404. Notice of Sampling on a Licensed Off-sale Retail Premises

A. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler that intends to conduct a sampling under A.R.S. § 4-243(B)(3) or 4-244.04 on the licensed premises of a licensed off-sale retailer shall submit a Store Sampling Notice, which is a form available from the Department, to the Department at least 10 days before the sampling.

B. This Section is authorized by A.R.S. §§ 4-243(B)(3)(b) and 4-244.04.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-405. Notice of Change in Status: Active or Nonuse

A. A licensee that ceases to manufacture, sell, or deal in spirituous liquor for 30 consecutive days shall submit notice to the Department, on a form that is available from the Department.

B. Except as provided in subsection (D), a licensee that puts a license on nonuse status by complying with subsection (A) may put the license on active status by submitting notice to the Department, on a form that is available from the Department.

C. If a license is on nonuse status for more than five months, the licensee shall pay the surcharge prescribed at A.R.S. § 4-203(G) when the license is returned to active status by complying with subsection (B).

D. Under A.R.S. § 4-203(G), if a license is on nonuse status for 36 months, the license automatically reverts to the state unless extended by the Director for good cause.

E. This Section is authorized by A.R.S. § 4-203.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-406. Notice of Change in Manager

A. As required under A.R.S. § 4-202(C), a licensee shall provide notice to the Department and file a manager's agreement within 30 days after a change in manager.

B. If a licensee is designated as the manager, the licensee shall comply with subsection (A) when the licensee will be away from the licensed premises, while under normal operating conditions, for more than 30 days.

C. This Section is authorized by A.R.S. § 4-202(C).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-407. Notice of Legal or Equitable Interest

A. To enable the Department to fulfill its responsibility under A.R.S. § 4-112(B)(3), a person that has a legal or equitable interest in a license issued under A.R.S. Title 4 and this Chapter shall file with the Department a statement of the interest. A person filing a statement of legal or equitable interest shall use a form that is available from the Department.

B. A person that has a legal or equitable interest in a license issued under A.R.S. Title 4 and this Chapter shall file with the Department an amended statement of the interest by complying with subsection (A) when:

1. Any of the information provided in a previous statement of interest changes, or
2. The person's legal or equitable interest terminates.

C. To enable the Department to fulfill its responsibility under A.R.S. § 4-112(B)(3), the Department shall periodically request that the holders of a legal or equitable interest in a license verify in writing to the Director that the statement on file with the Department is correct and accurate. If the holder of a legal or equitable interest in a license fails to respond within 30 days to the Department's request for verification of interest, the Department shall deem the interest terminated.

D. The Department shall provide notice to a person that files a statement of interest under subsection (A) when there is a disciplinary or compliance action or transfer affecting the license in which the person has an interest and shall allow the person to participate in any proceeding regarding the license.

E. This Section is authorized by A.R.S. § 4-112(B)(3).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-408. Notice of Change in Business Name, Address, E-mail, or Telephone Number

A. A licensee shall not change the name of the business as specified on the license issued by the Department without first providing notice, using a form that is available from the Department.

B. The Department shall communicate with a licensee using the business name, U.S. Postal Service address on file with the Department, and e-mail, when provided. To ensure timely communication from the Department, a licensee shall provide the Department with current contact information for the licensee. When contact information for a licensee changes, the licensee shall submit a notice, using a form that is available from the Department.

C. If the name or U.S. Postal Service address of a business changes and notice is provided under subsection (A) or (B), the Department shall issue a replacement license that reflects the current name and U.S. Postal Service address of the business.

D. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 5. REQUIRED RECORDS AND REPORTS

R19-1-501. General Recordkeeping

A. A licensee may maintain any record required under A.R.S. Title 4 or this Chapter in electronic form so long as the licensee is readily able to access and produce a paper copy of the electronic record.

B. A licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of spirituous alcohol for two years.

C. A hotel-motel or restaurant licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of food in the manner specified in R19-1-317 for two years.

D. A licensee shall make the invoices, records, bills, and other papers and documents maintained under subsections (B) and (C) available, upon request, to the Department for examination or audit. During an examination or audit and upon request, the licensee shall provide valid identification to the Department.

E. This Section is authorized by A.R.S. §§ 4-210(A)(7), 4-119, and 4-241(K).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-502. On-sale Retail Personnel Records

A. As required by A.R.S. § 4-119, an on-sale retail licensee shall maintain a record of every employee of the business that includes the following information about the employee:

1. Full legal name,
2. Residential address,
3. Date of birth, and
4. Description of the employee's responsibilities.

B. A licensee shall maintain the records required under subsection (A) for two years after an individual ceases to be an employee of the business.

C. A licensee shall make the records maintained under subsection (A) available, upon request, to the Department for examination.

D. This Section is authorized by A.R.S. § 4-119.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-503. Records Regarding Cooperative Purchases

A. A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall maintain a copy of every cooperative-purchase agreement between the registered retail agent and another licensee for two years after termination of the cooperative-purchase agreement.

B. A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall maintain in accordance with R19-1-501:

1. A copy of a cooperative purchase order placed with a wholesaler,
2. A copy of a cooperative-purchase invoice provided by a wholesaler, and
3. A record of the following regarding each cooperative member:
   a. The kind and quantity of spirituous liquor ordered and delivered,
   b. Monies received from the cooperative member, and
   c. The date on and location at which spirituous liquor is delivered to the cooperative member.

C. A wholesaler that fills a cooperative-purchase order submitted by a retail agent registered under A.R.S. § 4-222 and R19-1-203 shall prepare and provide to the registered retail agent a master invoice of the cooperative purchase that shows the spirituous liquor purchased by each cooperative member and the amount of the discount provided for the cooperative purchase.

D. This Section is authorized by A.R.S. § 4-222.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-504. Record of Delivery of Spirituous Liquor

A. A retail licensee having off-sale privileges or licensed domestic farm winery that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J) or 4-205.04(C)(9) and R19-1-315, shall complete a record of each delivery at the time of delivery. The licensee shall ensure that the record provides the following information:

1. Name of licensee making the delivery,
2. Address of licensee making the delivery,
3. License number,
4. Date and time of delivery,
5. Address at which delivery is made,
6. Type and brand of spirituous liquor delivered, and
7. Printed name and signature of the individual making the delivery.

B. In addition to the information required under subsection (A), a retail licensee having off-sale privileges that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J), shall obtain the following information about the individual accepting delivery of the spirituous liquor:

1. Name,
2. Date of birth,
3. Type of and number on the identification used to verify the individual's date of birth, and
4. The signature of the individual accepting delivery. The retail licensee making delivery may use an electronic signature system to comply with this subsection.

C. A licensed domestic farm winery that delivers spirituous liquor, as authorized by A.R.S. § 4-205.04(C)(9), may rely on an electronic signature system operated by the United Parcel Service or Federal Express to comply with the requirements in subsection (A).

D. A licensed retailer that delivers spirituous liquor under A.R.S. § 4-203.04(H) or a direct shipment licensee that ships wine under A.R.S. § 4-203.04(J) may rely on an electronic signature system operated by the United Parcel Service or Federal Express.

E. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(H) and (J), 4-205.04(C)(9) and (D).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-505. Report of Act of Violence

A. As required under A.R.S. § 4-244(37), a licensee shall report an act of violence that occurs on the licensed premises.

B. A licensee shall report an act of violence that occurs on property immediately adjacent to the licensed premises if the act of violence involves a customer who is entering or leaving the licensed premises and if the licensee knew or reasonably should have known of the act of violence.

C. A licensee shall submit the report required under subsection (A) to the Department or a law enforcement agency. A licensee shall submit the report required under subsection (B) to the Department.

D. A licensee shall submit the report required under subsection (A) or (B) within seven days after the act of violence occurs.

E. A licensee that submits a report under subsection (A) or (B) to the Department shall use a form that is available from the Department and provide the following information to the best of the licensee's knowledge:

1. Name of licensee or licensee's agent;
2. License number;
3. Name of business;
4. Address of licensed premises;
5. Date of the report;
6. Date and time of the incident being reported;
7. A statement whether the police were summoned and if so:
   a. Name of the police jurisdiction summoned,
   b. Name of the individual who placed the call to the police,
   c. Police report number, and
   d. A statement whether an arrest was made;
8. A statement whether emergency services were summoned and if so, the name of the individual who placed the call for emergency services;
9. Names or description of participants in the incident;
10. Names of individuals injured in the incident and a description of the injury;
11. Detailed description of the incident; and
12. Name, title, and signature of the individual preparing the report affirming that the information provided is true and accurate to the best of the individual's knowledge.

F. This Section is authorized by A.R.S. § 4-244(37).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 6. VIOLATIONS; HEARINGS; DISCIPLINE

R19-1-601. Appeals and Hearings

A. Under A.R.S. § 4-210.02(A), a decision of the Director, except as provided under A.R.S. § 4-203.01(E), is not final until it is appealed to and ruled on by the Board or until the time for appeal expires.

B. As required by A.R.S. § 4-210(H), the Department, Board, or a panel of the Board established under A.R.S. § 4-111(D) shall ensure that all hearings are conducted according to the procedures at A.R.S. Title 41, Chapter 6, Article 10.

C. This Section is authorized by A.R.S. § 4-210(H).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-602. Actions During License Suspension

A. If the Director suspends a license issued under A.R.S. Title 4 and this Chapter, the licensee:

1. Shall not take any action on or about the business premises for which a license is required under A.R.S. Title 4 or this Chapter, and

2. Shall prominently display the notice of suspension on the business premises during the suspension.

B. This Section is authorized by A.R.S. § 4-244(1).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-603. Seizure of Spirituous Liquor

A. If a peace officer has probable cause to believe that a spirituous liquor is being or is intended to be used in a manner that is inconsistent with a provision of A.R.S. Title 4 or this Chapter, the peace officer shall seize the spirituous liquor.

B. This Section is authorized by A.R.S. § 4-244.05(F).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-604. Closure Due to Violence

A. If the Director determines that an act of violence is apt to occur at a licensed premises and that action is needed to protect the public health, safety, or welfare, the Director shall order that:

1. The licensee closes the doors of the licensed premises to the public;
2. No spirituous liquor be sold or served to any individual on the licensed premises; and
3. Only the licensee, employees of the licensee, and peace officers are allowed on the licensed premises.

B. This Section is authorized by A.R.S. § 4-210.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 7. STATE LIQUOR BOARD

R19-1-701. Election of Officers

A. The Board shall elect a chairperson and vice chairperson in February of each year.

B. If a vacancy occurs in the chairperson or vice chairperson office, the Board shall hold an election for the vacant office at its next scheduled meeting.

C. This Section is authorized by A.R.S. § 4-111(C).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-702. Determining Whether to Grant a License for a Certain Location

A. To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:

1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
2. Number and types of licenses within one mile of the proposed premises;
3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
5. Residential and commercial population density within one mile of the proposed premises;
6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
7. Effect on vehicular traffic within one mile of the proposed premises;
8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;

11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.

B. This Section is authorized by A.R.S. § 4-201(I).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-703. Rehearing or Review of a Decision

A. As permitted under A.R.S. § 41-1092.09, a party may file with the Board a motion for rehearing or review of a decision issued by the Board.

B. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

C. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:

1. Irregularity in the proceedings or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Director or Board, Department staff, or an administrative law judge;
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 or insufficient 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; and
7. The findings of fact or decision is not justified by the evidence or is contrary to law.

D. The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (C). The Board shall specify with particularity the grounds for an order modifying a decision or granting a rehearing or review. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

E. Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of the decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in a motion. The Board shall specify with particularity the grounds on which a rehearing or review is granted under this subsection.

F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Board for five additional days for good cause or by written stipulation of the parties. Reply affidavits may be permitted.

G. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.

H. This Section is authorized by A.R.S. §§ 4-210.02 and 41-1092.09.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-704. Submitting Documents to the Board

A. To facilitate the Board's review of documents submitted to it, a party shall submit documents to the Board in printed form and:

1. In an electronic format directed by the Board, or
2. By means of a removable data-storage device such as a compact disc or flash drive.

B. To provide the Board with time to consider adequately documents requiring its action, the following deadlines apply:

1. An applicant, local governing body, or aggrieved party that wishes to submit information regarding an application shall submit the information at least 15 calendar days before the meeting at which the Board will consider the application;
2. An applicant, local governing body, or aggrieved party that wishes to rebut information submitted under subsection (B)(1) shall submit the rebuttal information within five calendar days before the meeting at which the Board will consider the application; and
3. An appellant shall submit a brief at least 21 calendar days before the meeting at which the Board will consider the appeal.

C. A party who is unable to submit documents in an electronic format or by means of a removable data storage device may ask the Board for an exemption from the requirement in subsection (A).

D. This Section is authorized by A.R.S. §§ 4-112(A)(2) and 4-201(E).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-705. Judicial Review

A. A party may file a complaint for judicial review of a final decision of the Board under A.R.S. § 12-901 et seq.

B. A party that files a complaint for judicial review of a final decision of the Board shall serve a copy of the complaint for judicial review on the Director at the Department's office in Phoenix, Arizona.

C. This Section is authorized by A.R.S. §§ 4-211 and 12-901et seq.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

4-101. Definitions

In this title, unless the context otherwise requires:

1. "Act of violence" means an incident consisting of a riot, a brawl or a disturbance, in which bodily injuries are sustained by any person and such injuries would be obvious to a reasonable person, or tumultuous conduct of sufficient intensity as to require the intervention of a peace officer to restore normal order, or an incident in which a weapon is brandished, displayed or used. Act of violence does not include the use of nonlethal devices by a peace officer.

2. "Aggrieved party" means a person who resides at, owns or leases property within a one mile radius of a premises proposed to be licensed and who filed a written request with the department to speak in favor of or opposition to the issuance of the license no later than sixty days after the filing of the application or fifteen days after action by the local governing body, whichever is later.

3. "Beer" means any beverage obtained by the alcoholic fermentation, infusion or decoction of barley malt, hops, or other ingredients not drinkable, or any combination of them.

4. "Board" means the state liquor board.

5. "Bona fide guest" means:

(a) An individual who is personally familiar to the member, who is personally sponsored by the member and whose presence as a guest is in response to a specific and personal invitation.

(b) In the case of a club that meets the criteria prescribed in paragraph 7, subdivision (a) of this section, a current member of the armed services of the United States who presents proper military identification and any member of a recognized veterans' organization of the United States and of any country allied with the United States during current or past wars or through treaty arrangements.

6. "Broken package" means any container of spirituous liquor on which the United States tax seal has been broken or removed, or from which the cap, cork or seal placed thereupon by the manufacturer has been removed.

7. "Club" includes any of the following organizations where the sale of spirituous liquor for consumption on the premises is made to members only:

(a) A post, chapter, camp or other local unit composed solely of veterans and its duly recognized auxiliary that has been chartered by the Congress of the United States for patriotic, fraternal or benevolent purposes and that has, as the owner, lessee or occupant, operated an establishment for that purpose in this state.

(b) A chapter, aerie, parlor, lodge or other local unit of an American national fraternal organization that has, as the owner, lessee or occupant, operated an establishment for fraternal purposes in this state. An American national fraternal organization as used in this subdivision shall actively operate in not less than thirty-six states or have been in active continuous existence for not less than twenty years.

(c) A hall or building association of a local unit mentioned in subdivisions (a) and (b) of this paragraph, all of the capital stock of which is owned by the local unit or the members, and that operates the clubroom facilities of the local unit.

(d) A golf club that has more than fifty bona fide members and that owns, maintains or operates a bona fide golf links together with a clubhouse.

(e) A social club with more than one hundred bona fide members who are actual residents of the county in which it is located, that owns, maintains or operates club quarters, that is authorized and incorporated to operate as a nonprofit club under the laws of this state, and that has been continuously incorporated and operating for a period of not less than one year. The club shall have had, during this one year period, a bona fide membership with regular meetings conducted at least once each month, and the membership shall be and shall have been actively engaged in carrying out the objects of the club. The club's membership shall consist of bona fide dues paying members paying at least six dollars per year, payable monthly, quarterly or annually, which have been recorded by the secretary of the club, and the members at the time of application for a club license shall be in good standing having for at least one full year paid dues. At least fifty-one per cent of the members shall have signified their intention to secure a social club license by personally signing a petition, on a form prescribed by the board, which shall also include the correct mailing address of each signer. The petition shall not have been signed by a member at a date earlier than one hundred eighty days before the filing of the application. The club shall qualify for

exemption from the payment of state income taxes under title 43. It is the intent of this subdivision that a license shall not be granted to a club that is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide club, where the sale of liquor is incidental to the main purposes of the club.
(f) An airline club operated by or for airlines that are certificated by the United States government and that maintain or operate club quarters located at airports with international status.
8. "Company" or "association", when used in reference to a corporation, includes successors or assigns.
9. "Control" means the power to direct or cause the direction of the management and policies of an applicant, licensee or controlling person, whether through the ownership of voting securities or a partnership interest, by agreement or otherwise. Control is presumed to exist if a person has the direct or indirect ownership of or power to vote ten per cent or more of the outstanding voting securities of the applicant, licensee or controlling person or to control in any manner the election of one or more of the directors of the applicant, licensee or controlling person. In the case of a partnership, control is presumed to mean the general partner or a limited partner who holds ten per cent or more of the voting rights of the partnership. For the purposes of determining the percentage of voting securities owned, controlled or held by a person, there shall be aggregated with the voting securities attributed to the person the voting securities of any other person directly or indirectly controlling, controlled by or under common control with the other person, or by an officer, partner, employee or agent of the person or by a spouse, parent or child of the person. Control is also presumed to exist if a creditor of the applicant, licensee or controlling person holds a beneficial interest in ten per cent or more of the liabilities of the licensee or controlling person.
10. "Controlling person" means a person directly or indirectly possessing control of an applicant or licensee.
11. "Craft distiller" means a distiller in the United States or in a territory or possession of the United States that holds a license pursuant to section 4-205.10.
12. "Department" means the department of liquor licenses and control.
13. "Director" means the director of the department of liquor licenses and control.
14. "Distilled spirits" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, fruits preserved in ardent spirits, and any alcoholic mixture or preparation, whether patented or otherwise, that may in sufficient quantities produce intoxication.
15. "Employee" means any person who performs any service on licensed premises on a full-time, part-time or contract basis with consent of the licensee, whether or not the person is denominated an employee, independent contractor or otherwise. Employee does not include a person exclusively on the premises for musical or vocal performances, for repair or maintenance of the premises or for the delivery of goods to the licensee.
16. "Farm winery" means a winery in the United States or in a territory or possession of the United States that holds a license pursuant to section 4-205.04.
17. "Government license" means a license to serve and sell spirituous liquor on specified premises available only to a state agency, state board, state commission, county, city, town, community college or state university or the national guard or Arizona coliseum and exposition center on application by the governing body of a state agency, state board, state commission, county, city, town, community college or state university or the national guard or Arizona exposition and state fair board.
18. "Legal drinking age" means twenty-one years of age or older.
19. "License" means a license or an interim retail permit issued pursuant to this title.
20. "License fees" means fees collected for license issuance, license application, license renewal, interim permit issuance and license transfer between persons or locations.
21. "Licensee" means a person who has been issued a license or an interim retail permit pursuant to this title or a special event licensee.

22. "Manager" means a natural person who meets the standards required of licensees and who has authority to organize, direct, carry on, control or otherwise operate a licensed business on a temporary or full-time basis.
23. "Microbrewery" means a brewery in the United States or in a territory or possession of the United States that meets the requirements of section 4-205.08.
24. "Off-sale retailer" means any person operating a bona fide regularly established retail liquor store selling spirituous liquors, wines and beer, and any established retail store selling commodities other than spirituous liquors and engaged in the sale of spirituous liquors only in the original unbroken package, to be taken away from the premises of the retailer and to be consumed off the premises.
25. "On-sale retailer" means any person operating an establishment where spirituous liquors are sold in the original container for consumption on or off the premises or in individual portions for consumption on the premises.
26. "Person" includes a partnership, limited liability company, association, company or corporation, as well as a natural person.
27. "Premises" or "licensed premises" means the area from which the licensee is authorized to sell, dispense or serve spirituous liquors under the provision of the license. Premises or licensed premises includes a patio that is not contiguous to the remainder of the premises or licensed premises if the patio is separated from the remainder of the premises or licensed premises by a public or private walkway or driveway not to exceed thirty feet, subject to rules the director may adopt to establish criteria for noncontiguous premises.
28. "Registered mail" includes certified mail.
29. "Registered retail agent" means any person who is authorized pursuant to section 4-222 to purchase spirituous liquors for and on behalf of himself and other retail licensees.
30. "Repeated acts of violence" means two or more acts of violence occurring within seven days, three or more acts of violence occurring within thirty days or acts of violence occurring with any other similar frequency which the director determines to be unusual or deserving of review.
31. "Sell" includes soliciting or receiving an order for, keeping or exposing for sale, directly or indirectly delivering for value, peddling, keeping with intent to sell and trafficking in.
32. "Spirituous liquor" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt beverage, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half of one per cent of alcohol by volume.
33. "Vehicle" means any means of transportation by land, water or air, and includes everything made use of in any way for such transportation.
34. "Vending machine" means a machine that dispenses merchandise through the means of coin, token, credit card or other nonpersonal means of accepting payment for merchandise received.
35. "Veteran" means a person who has served in the United States air force, army, navy, marine corps or coast guard, as an active nurse in the services of the American red cross, in the army and navy nurse corps in time of war, or in any expedition of the armed forces of the United States, and who has received a discharge other than dishonorable.
36. "Voting security" means any security presently entitling the owner or holder of the security to vote for the election of directors of an applicant, licensee or controlling person.
37. "Wine" means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage fortified with grape brandy and containing not more than twenty-four per cent of alcohol by volume.

4-111. State liquor board; department of liquor licenses and control; members; director; appointment and removal

A. The department of liquor licenses and control is established consisting of the state liquor board and the office of director of the department.
B. From and after January 31, 2003, the board consists of seven members to be appointed by the governor pursuant to section 38-211. Five of the members of the board shall not be financially interested directly or indirectly in business licensed to deal with spirituous liquors. Two members shall currently be engaged in business in the spirituous liquor industry or have been engaged in the past in business in the spirituous liquor industry, at least one of whom shall currently be a retail licensee or employee of a retail licensee. One member shall be a member of a neighborhood association recognized by a county, city or town. The term of members is three years. Members' terms expire on the third Monday in January of the appropriate year. The governor may remove any member of the board for cause. No member may represent a licensee before the board or the department for a period of one year after the conclusion of the member's service on the board.
C. The board shall annually elect from its membership a chairman and vice-chairman. A majority of the board constitutes a quorum, and a concurrence of a majority of a quorum is sufficient for taking any action. If there are unfilled positions on the board, a majority of those persons appointed and serving on the board constitutes a quorum.
D. The chairman may designate panels of not less than three members. A panel may take any action that the board is authorized to take pursuant to this title. Such action includes the ability to hold hearings and hear appeals of administrative disciplinary proceedings of licenses issued pursuant to this chapter. A panel shall not, however, adopt rules as provided in section 4-112, subsection A, paragraph 2. The chairman may from time to time add additional members or remove members from a panel. A majority of a panel may upon the concurrence of a majority of the members of the panel take final action on hearings and appeals of administrative disciplinary proceedings concerning licenses issued pursuant to this chapter.
E. Members of the board are entitled to receive compensation at the rate of fifty dollars per day while engaged in the business of the board.
F. A person shall not be appointed to serve on the board unless the person has been a resident of this state for not less than five years before the person's appointment. No more than four members may be of the same political party. Persons eligible for appointment shall have a continuous recorded registration pursuant to title 16, chapter 1 with the same political party or as an independent for at least two years immediately preceding appointment. No more than two members may be appointed from the same county.
G. The governor shall appoint the director, pursuant to section 38-211, who shall be a qualified elector of the state and experienced in administrative matters and enforcement procedures. The director shall serve at the pleasure of the governor.
H. The director is entitled to receive a salary as determined pursuant to section 38-611.

4-112. Powers and duties of board and director of department of liquor licenses and control; investigations; county and municipal regulation
A. The board shall:
1. Grant and deny applications in accordance with the provisions of this title.
2. Adopt rules in order to carry out the provisions of this section.
3. Hear appeals and hold hearings as provided in this section.
B. Except as provided in subsection A of this section, the director shall administer the provisions of this title, including:
1. Adopting rules:
(a) For carrying out the provisions of this title.
(b) For the proper conduct of the business to be carried on under each specific type of spirituous liquor license.
(c) To enable and assist state officials and political subdivisions to collect taxes levied or imposed in connection with spirituous liquors.

(d) For the issuance and revocation of certificates of registration of retail agents, including provisions governing the shipping, storage and delivery of spirituous liquors by registered retail agents, the keeping of records and the filing of reports by registered retail agents.
(e) To establish requirements for licensees under section 4-209, subsection B, paragraph 12.
2. Subject to title 41, chapter 4, article 4, employing necessary personnel and fixing their compensation pursuant to section 38-611.
3. Keeping an index record which shall be a public record open to public inspection and shall contain the name and address of each licensee and the name and address of any person having an interest, either legal or equitable, in each license as shown by any written document, which document shall be placed on file in the office of the board.
4. Providing the board with such supplies and personnel as may be directed by the board.
5. Responding in writing to any law enforcement agency that submits an investigative report to the department relating to a violation of this title, setting forth what action, if any, the department has taken or intends to take on the report and, if the report lacks sufficient information or is otherwise defective for use by the department, what the agency must do to remedy the report.
6. Taking such steps as are necessary to maintain effective liaison with the department of public safety and all local law enforcement agencies in the enforcement of this title including the laws of this state against the consumption of spirituous liquor by persons under the legal drinking age.
7. Providing training to law enforcement agencies in the proper investigation and reporting of violations of this title.
C. The director shall establish within the department a separate investigations unit which has as its sole responsibility the investigation of compliance with this title including the investigation of licensees alleged to have sold or distributed spirituous liquor in any form to persons under the legal drinking age. Investigations conducted by this unit may include covert undercover investigations.
D. All employees of the department of liquor licenses and control, except members of the state liquor board and the director of the department, shall be employed by the department in the manner prescribed by the department of administration.
E. The director may enter into a contract or agreement with any public agency for any joint or cooperative action as provided for by title 11, chapter 7, article 3.
F. The board or the director may take evidence, administer oaths or affirmations, issue subpoenas requiring attendance and testimony of witnesses, cause depositions to be taken and require by subpoena duces tecum the production of books, papers and other documents which are necessary for the enforcement of this title. Proceedings held during the course of a confidential investigation are exempt from title 38, chapter 3, article 3.1. If a person refuses to obey a subpoena or fails to answer questions as provided by this subsection, the board or the director may apply to the superior court in the manner provided in section 12-2212. The board or director may serve subpoenas by personal service or certified mail, return receipt requested.
G. The director may:
1. Examine books, records and papers of a licensee.
2. Require applicants, licensees, employees who serve, sell or furnish spirituous liquors to retail customers, managers and managing agents to take training courses approved by the director in spirituous liquor handling and spirituous liquor laws and rules. The director shall adopt rules that set standards for approving training courses. The department's licensed investigators may participate and receive compensation as lecturers at approved training courses within this state's jurisdiction that are conducted by other entities but shall not participate in in-house training programs for licensees.
3. Delegate to employees of the department authority to exercise powers of the director in order to administer the department.
4. Regulate signs that advertise a spirituous liquor product at licensed retail premises.
5. Cause to be removed from the marketplace spirituous liquor that may be contaminated.
6. Regulate the age and conduct of erotic entertainers at licensed premises. The age limitation governing these erotic entertainers may be different from other employees of the licensee.

7. Issue and enforce cease and desist orders against any person or entity that sells beer, wine or spirituous liquor without an appropriate license or permit.
8. Confiscate wines carrying a label including a reference to Arizona or any Arizona city, town or place unless at least seventy-five per cent by volume of the grapes used in making the wine were grown in this state.
9. Accept and expend private grants of monies, gifts and devises for conducting educational programs for parents and students on the repercussions of underage alcohol consumption. State general fund monies shall not be expended for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are nonlapsing and do not revert to the state general fund at the close of the fiscal year.
10. Procure fingerprint scanning equipment and provide fingerprint services to license applicants and licensees. The department may charge a fee for providing these services.
11. Accept electronic signatures on all department and licensee forms and documents and applications. The director may adopt requirements that would require facsimile signatures to be followed by original signatures within a specified time period.
H. A county or municipality may enact and enforce ordinances regulating the age and conduct of erotic entertainers at licensed premises in a manner at least as restrictive as rules adopted by the director.

4-113. Enforcement officer; credentials; peace officer status
Each enforcement officer within the department who is designated by the director shall, for identification purposes, have credentials signed by the director and countersigned by the governor and, when bearing these credentials, has the powers and duties of a peace officer.

4-114. Interest in business prohibited; forfeiture of office
A. Except for a member designated by the governor to be appointed from the industry, no member of the board or the director or any employee of the department shall be financially interested directly or indirectly in any business licensed to deal in spirituous liquors.
B. Violation of this section by the director or any member of the board shall be deemed a resignation by such person, and a violation by an employee of the department shall result in his immediate dismissal.

4-115. Disposition of fees and penalties
A. Unless otherwise provided, all license, registration and other fees and all penalties collected pursuant to this title shall be deposited, pursuant to sections 35-146 and 35-147, in the liquor licenses fund established by section 4-120, except that monies in excess of the annual legislative appropriation to the department shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
B. Two-thirds of the license fees collected pursuant to this title in each county shall be deposited, pursuant to sections 35-146 and 35-147, in the liquor licenses fund established by section 4-120, except that monies in excess of the annual legislative appropriation to the department shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. One-third of the license fees collected in each county with a population of five hundred thousand persons or less as shown by the most recent United States decennial census shall be paid monthly by the director to the county treasurer of that county. For each county with a population of more than five hundred thousand persons as shown by the most recent United States decennial census, the director shall pay monthly to the county treasurer from the remaining one-third of the license fees three thousand dollars for each new license issued for premises in unincorporated areas of that county but not more than one hundred fifty thousand dollars annually. The remainder of the one-third of the license fees collected for premises in each county with a population of

more than five hundred thousand persons as shown by the most recent United States decennial census shall be deposited in the state general fund.

4-116. Receipts from club licenses and applications
Notwithstanding any provision of law to the contrary, all receipts derived from club licenses and applications therefor are appropriated to the department of economic security for buildings, equipment or other capital investments. All revenue so received by the department shall be deposited, pursuant to sections 35-146 and 35-147, in the economic security capital investments fund.

4-118. Inspection of premises
The director, the director's agents and any peace officer may, in enforcing the provisions of this title, visit during the hours in which the premises are occupied and inspect the premises of a licensee.

4-119. Records
A licensee shall keep records of licensed business activity in a manner and location and for such duration as prescribed by the director. The rules of the director shall require that each on-sale retailer maintain at the licensed premises a copy of all required records including a current log of all persons employed at the licensed premises including each employee's full legal name, date of birth, address and responsibilities. A licensee shall retain records for two years.

4-120. Liquor licenses fund; exemption
A. The liquor licenses fund is established consisting of monies deposited pursuant to section 4-115. The department of liquor licenses and control shall administer the fund. The amount deposited in the fund each year shall not exceed the amount appropriated by the legislature.
B. Monies in the fund are subject to legislative appropriation.
C. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations, except that any monies remaining in the fund in excess of seven hundred thousand dollars at the end of each fiscal year reverts to the state general fund.

4-201. Licensing; application procedure in city, town or county; burden of proof
A. A person desiring a license to manufacture, sell or deal in spirituous liquors shall make application to the director on a form prescribed and furnished by the director.
B. A person desiring a license within an incorporated city or town shall make the application in triplicate and shall file the copies with the director. The director shall remit two copies to the city or town clerk. The city or town clerk shall immediately file one copy in the clerk's office and post the other for a period of twenty days in a conspicuous place on the front of the premises where the business is proposed to be conducted, with a statement requiring any natural person who is a bona fide resident residing or owning or leasing property within a one mile radius from the premises proposed to be licensed, and who is in favor of or opposed to the issuance of the license, to file written arguments in favor of or opposed to the issuance of the license with the clerk within twenty days after the date of posting. The posting shall be limited to a copy of the license application and shall not contain any attachments filed with the application. The written argument shall contain the natural person's complete name, street address or post office box address and written or electronic signature. If the written arguments are filed by a person on behalf of a corporation or other legal entity or association, the written arguments must be accompanied by a copy of the entity's organizing document, a designation of the office or position that the person holds within the organization and a copy of the written appointment of the person to speak on behalf of the

organization. If the written arguments are filed by a neighborhood association, block watch or other unincorporated association, written arguments must be accompanied by a letter of authority designating that person as a spokesperson. The posting shall contain substantially the following:

Notice

A hearing on a liquor license application shall be held before the local governing body at the following date, time and place:

(Insert date, time and address)

The local governing body will recommend to the state liquor board whether the board should grant or deny the license. The state liquor board may hold a hearing to consider the recommendation of the local governing body. Any person residing or owning or leasing property within a one-mile radius may contact the state liquor board in writing to register as a protestor. To request information regarding procedures before the board and notice of any board hearings regarding this application, contact the state liquor board at:

(Insert address and telephone number).

No arguments shall be filed or accepted by the city or town clerk thereafter. This subsection shall not be construed to prevent a bona fide resident residing or owning or leasing property within a one-mile radius from the premises proposed to be licensed from testifying in favor of or in opposition to the issuance of the license, regardless of whether or not the person is a user or nonuser of spirituous liquor.

C. The governing body of the city, town or county shall then enter an order recommending approval or disapproval within sixty days after filing of the application and shall file a certified copy of the order with the director. If the recommendation is for disapproval, a statement of the specific reasons containing a summary of the testimony or other evidence supporting the recommendation for disapproval shall be attached to the order. All petitions submitted to the governing body within the twenty-day period for filing protests shall be transmitted to the director with the certified copy of the order.

D. If a person applies for a license to conduct a spirituous liquor business outside an incorporated city or town, the director shall remit two copies of the application to the clerk of the board of supervisors of the county where the applicant desires to do business, and the proceedings by the clerk and board of supervisors shall be as provided for cities and towns.

E. On receipt of an application for a spirituous liquor license, the director shall set the application for hearing by the board on a date following the expiration of the time fixed for the submitting of the certified order by the governing body of the city or town or the board of supervisors. If the city or town or the county recommends approval of the license no hearing is required unless the director, the board or any aggrieved party requests a hearing on the grounds that the public convenience and the best interest of the community will not be substantially served if a license is issued. Any natural person residing or owning or leasing property within a one mile radius of the proposed location may file a written protest with the director no later than fifteen calendar days following action by the local governing body or sixty days after filing the application. The written argument shall contain the natural person's complete name, street address or post office box address and written or electronic signature. If the written arguments are filed by a person on behalf of a corporation or other legal entity or association, the written arguments must be accompanied by a copy of the entity's organizing document, a designation of the office or position that the person holds within the organization and a copy of the written appointment of the person to speak on behalf of the organization. If the written arguments are filed by a neighborhood association, block watch or other unincorporated association, written arguments must be accompanied by a letter of authority designating that person as a spokesperson. If no hearing is requested by the director, the board or any aggrieved party, the application may be approved by the director. If the recommendation is for disapproval of an application, the board shall hold a hearing. If the city, town or county recommends approval of the license pursuant to subsection C of this section or makes no recommendation, the director may cancel the hearing and issue the license unless the board or any aggrieved party requests a hearing. If the reason for the protest is clearly removed or deemed satisfied by the director, the board shall cancel the hearing. If the board cancels the hearing, the department may administratively issue an order without the applicant licensee or other parties present. The certified order, the reasons contained in the order and the

summary of the testimony and other evidence supporting the city, town or county disapproval of the recommendation shall be read into the record before the board and shall be considered as evidence by the board. The board shall consider the certified order together with other facts and a report of the director relating to the qualifications of the applicant. If the governing body of the city or town or the board of supervisors fails to return to the director, as provided in subsections C and D of this section, its order of disapproval, no hearing is required. An application shall be approved or disapproved within one hundred five days after filing of the application. If, after a hearing by the board where a license has been approved, a formal written order is not entered within thirty days after the hearing, the decision of the board shall be deemed entered on the thirtieth day after the hearing.

F. A hearing may be conducted by an administrative law judge at the request of the board to make findings and recommendations for use by the board in determining whether to grant or deny a license. The administrative law judge shall submit a report of findings to the board within twenty days of the hearing. The board may affirm, reverse, adopt, modify, supplement, amend or reject the administrative law judge's report in whole or in part.

G. Except for a person to person transfer of a transferable license for use at the same location and as otherwise provided in section 4-203, subsection A, in all proceedings before the governing body of a city or town, the board of supervisors of a county or the board, the applicant bears the burden of showing that the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license.

H. In order to prevent the proliferation of spirituous liquor licenses the department may deny a license to a business on the grounds that such business is inappropriate for the sale of spirituous liquor. An inappropriate business is one that cannot clearly demonstrate that the sale of spirituous liquor is directly connected to its primary purpose and that the sale of spirituous liquor is not merely incidental to its primary purpose.

I. The board shall adopt, by rule, guidelines setting forth criteria for use in determining whether the public convenience requires and the best interest of the community will be substantially served by the issuance or transfer of a liquor license at the location applied for. These guidelines shall govern the recommendations and other approvals of the department and the local governing authority.

J. If the governing body of a city or town recommends disapproval by a two-thirds vote of the members present and voting on an application for the issuance or transfer of a spirituous liquor license that, if approved, would result in a license being issued at a location either having no license or having a license of a different series, the application shall not be approved unless the board decides to approve the application by a two-thirds vote of the members present and voting.

4-201.01. Extending time limits

A. In the event any decision, hearing, or other action by the department, including the board, is alleged to be untimely, an aggrieved person may file a demand that the department take action within fifteen days. In the event the department does not then act, the aggrieved person may file an action in superior court seeking an order requiring the department to act.

B. Notwithstanding the provisions of subsection A of this section, if the director determines that it is in the public interest to extend the time limits for action by the department, including the board, in connection with a license issuance or transfer or acquisition of control, the director may extend the time limits by up to one hundred five days. The director may further extend the time limits as the director deems necessary if special circumstances such as litigation affecting the ownership of the license, bankruptcy, probate or other circumstances deemed meritorious by the director prevent the department from completing its action or the director requires additional time to complete an investigation of an applicant's qualifications for licensure pursuant to section 4-202. In no event shall the director extend the time limits more than one year except as necessary in the event of litigation affecting the ownership of the license, bankruptcy or probate or except on a written request of the applicant or licensee that the director determines is supported by good cause.

4-202. Qualifications of licensees; application; background information; prior convictions

A. Every spirituous liquor licensee, other than a club licensee, a corporation licensee, a limited liability company licensee or an out-of-state licensee, shall be a citizen of the United States and a bona fide resident of this state or a legal resident alien who is a bona fide resident of this state. If a partnership, each partner shall be a citizen of the United States and a bona fide resident of this state or a legal resident alien who is a bona fide resident of this state, except that for a limited partnership an individual general partner is required to meet the qualifications of an individual licensee, a corporate general partner is required to meet the qualifications of a corporate licensee and a limited partner is not required to be a citizen of the United States, a legal resident alien or a bona fide resident of this state. If a corporation or limited liability company, it shall be a domestic corporation or a foreign corporation or a limited liability company that has qualified to do business in this state. A person shall hold a club license, corporation license, limited liability company license, partnership license or out-of-state license through an agent who shall be a natural person and meet the qualifications for licensure, except that an agent for an out-of-state license as specified in section 4-209, subsection B, paragraph 2 need not be a resident of this state. For the purposes of this subsection, "agent" means a person who is designated by an applicant or licensee to receive communications from the department and to file documents and sign documents for filing with the department on behalf of the applicant or licensee.

B. A person shall file an application for a spirituous liquor license on a form prescribed by the director. The director shall require any applicant and may require any controlling person, other than a bank or licensed lending institution, to furnish background information and to submit a full set of fingerprints to the department. The department of liquor licenses and control shall submit the fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. If a license is issued or transferred when fees are waived pursuant to section 4-209, subsection I, no additional background check is required if the person has already completed a background investigation in connection with the continuing business.

C. Each applicant or licensee shall designate a person who shall be responsible for managing the premises. The designated person may be the applicant or licensee. The manager shall be a natural person and shall meet all the requirements for licensure. The same person may be designated as the manager for more than one premises owned by the same licensee. Notice of a change in the manager shall be filed with the director within thirty days after a change.

D. No license shall be issued to any person who, within one year before application, has had a license revoked. The director shall not issue an interim permit or restaurant license to any person who, at the same location, has been required to surrender a restaurant license pursuant to section 4-205.02, subsection D or section 4-213 until twelve months after the date of the surrender. No license shall be issued to or renewed for any person who, within five years before application, has been convicted of a felony, or convicted of an offense in another state that would be a felony in this state. For a conviction of a corporation to be a basis for a denial under the provisions of this section, the limitations that are provided in section 4-210, subsection A, paragraph 8 shall apply. No corporation shall have its annual license issued or renewed unless it has on file with the department a list of its officers and directors and any stockholders who own ten per cent or more of the corporation.

E. The department of liquor licenses and control shall receive criminal history record information from the department of public safety for applicants for employment with the department of liquor licenses and control or for a license issued by the department of liquor licenses and control.

F. The department shall not issue or renew a license for any person who on the request of the director fails to provide the department with complete financial disclosure statements indicating all financial holdings of the person or any other person in or relating to the license applied for, including all cosignatories on financial holdings, land, buildings, leases or other forms of indebtedness that the applicant has incurred or will incur.

4-203. Licenses; issuance; transfer; reversion to state

A. A spirituous liquor license shall be issued only after satisfactory showing of the capability, qualifications and reliability of the applicant and, with the exception of wholesaler, producer, government or club licensees, that the public convenience requires and that the best interest of the community will be substantially served by the issuance. If an application is filed for the issuance of a transferable or nontransferable license, other than for a craft distiller license, a microbrewery license or a farm winery license, for a location that on the date the application is filed has a valid license of the same series, or in the case of a restaurant license application filed for a location with a valid hotel-motel license, issued at that location, there shall be a rebuttable presumption that the public convenience and best interest of the community at that location was established at the time the location was previously licensed. The presumption may be rebutted by competent contrary evidence. The presumption shall not apply once the licensed location has not been in use for more than one hundred eighty days and the presumption shall not extend to the personal qualifications of the applicant.

B. The license shall be to manufacture, sell or deal in spirituous liquors only at the place and in the manner provided in the license. A separate license shall be issued for each specific business, and each shall specify:

1. The particular spirituous liquors that the licensee is authorized to manufacture, sell or deal in.
2. The place of business for which issued.
3. The purpose for which the liquors may be manufactured or sold.

C. A spirituous liquor license issued to a bar, a liquor store or a beer and wine bar shall be transferable as to any permitted location within the same county, provided such transfer meets the requirements of an original application. A spirituous liquor license may be transferred to a person qualified to be a licensee, provided such transfer is pursuant to either judicial decree, nonjudicial foreclosure of a legal or equitable lien, including security interests held by financial institutions pursuant to section 4-205.05, a sale of the license, a bona fide sale of the entire business and stock in trade, or such other bona fide transactions as may be provided for by rule. Any change in ownership of the business of a licensee, directly or indirectly, as defined by rule is deemed a transfer.

D. All applications for a new license pursuant to section 4-201 or for a transfer to a new location pursuant to subsection C of this section shall be filed with and determined by the director, except when the governing body of the city or town or the board of supervisors receiving an application pursuant to section 4-201 orders disapproval of the application or makes no recommendation or when the director, the state liquor board or any aggrieved party requests a hearing. The application shall then be presented to the state liquor board, and the new license or transfer shall not become effective unless approved by the state liquor board.

E. A person who assigns, surrenders, transfers or sells control of a liquor license or business that has a spirituous liquor license shall notify the director within thirty business days after the assignment, surrender, transfer or sale. No spirituous liquor license shall be leased or subleased. A concession agreement entered into under section 4-205.03 is not considered a lease or sublease in violation of this section.

F. If a person other than those persons originally licensed acquires control over a license or licensee, the person shall file notice of the acquisition with the director within thirty business days after the acquisition of control and a list of officers, directors or other controlling persons on a form prescribed by the director. All officers, directors or other controlling persons shall meet the qualifications for licensure as prescribed by this title. On request, the director shall conduct a preinvestigation before the assignment, sale or transfer of control of a license or licensee, the reasonable costs of which, not to exceed one thousand dollars, shall be borne by the applicant. The preinvestigation shall determine whether the qualifications for licensure as prescribed by this title are met. On receipt of notice of an acquisition of control or request of a preinvestigation, the director shall forward the notice within fifteen days to the local governing body of the city or town, if the licensed premises is in an incorporated area, or the county, if the licensed premises is in an unincorporated area. The local governing body of the city, town or county may protest the acquisition of control within sixty days based on the capability, reliability and qualification of the

person acquiring control. If the director does not receive any protests, the director may protest the acquisition of control or approve the acquisition of control based on the capability, reliability and qualification of the person acquiring control. Any protest shall be set for a hearing before the board. Any transfer shall be approved or disapproved within one hundred five days of the filing of the notice of acquisition of control. The person who has acquired control of a license or licensee has the burden of an original application at the hearing, and the board shall make its determination pursuant to section 4-202 and this section with respect to capability, reliability and qualification.

G. A licensee who holds a license in nonuse status for more than five months shall be required to pay a one hundred dollar surcharge for each month thereafter. The surcharge shall be paid at the time the license is returned to active status. A license automatically reverts to the state after being held in continuous nonuse in excess of thirty-six months. The director may waive the surcharge and may extend the time period provided in this subsection for good cause. A license shall not be deemed to have gone into active status if the license is transferred to a location that at the time of or immediately before the transfer had an active license of the same type, unless the licenses are under common ownership or control.

H. A restructuring of a licensee's business is an acquisition of control pursuant to subsection F of this section and is a transfer of a spirituous liquor license and not the issuance of a new spirituous liquor license if both of the following apply:

1. All of the controlling persons of the licensee and the new business entity are identical.
2. There is no change in control or beneficial ownership.

I. If subsection H of this section applies, the licensee's history of violations of this title is the history of the new business entity. The director may prescribe a form and shall require the applicant to provide the necessary information to ensure compliance with this subsection and subsections F and G of this section.

J. Notwithstanding subsection B of this section, the holder of a retail license having off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with the sale of spirituous liquor. The licensee may maintain a delivery service and shall be liable for any violation committed in connection with any sale or delivery of spirituous liquor, provided that such delivery is made by an employee who is at least twenty-one years of age. The retail licensee shall collect payment for the price of the spirituous liquor no later than at the time of delivery. The director shall adopt rules that set operational limits for the delivery of spirituous liquors by the holder of a retail license having off-sale privileges. For the purposes of this subsection, an independent contractor or the employee of an independent contractor is deemed to be an employee of the licensee when making a sale or delivery of spirituous liquor for the licensee.

K. Except as provided in subsection J of this section, Arizona licensees may transport spirituous liquors for themselves in vehicles owned, leased or rented by such licensee.

L. Notwithstanding subsection B of this section, an off-sale retail licensee may provide consumer tasting of wines off of the licensed premises.

M. The director may adopt reasonable rules to protect the public interest and prevent abuse by licensees of the activities permitted such licensees by subsections J and L of this section.

N. Failure to pay any surcharge prescribed by subsection G of this section or failure to report the period of nonuse of a license shall be grounds for revocation of the license or grounds for any other sanction provided by this title. The director may consider extenuating circumstances if control of the license is acquired by another party in determining whether or not to impose any sanctions under this subsection.

O. If a licensed location has not been in use for two years, the location must requalify for a license pursuant to subsection A of this section and shall meet the same qualifications required for issuance of a new license except when the director deems that the nonuse of the location was due to circumstances beyond the licensee's control.

P. If the licensee's interest is forfeited pursuant to section 4-210, subsection L, the location shall requalify for a license pursuant to subsection A of this section and shall meet the same qualifications required for issuance of a new license except when a bona fide lienholder demonstrates mitigation pursuant to section 4-210, subsection K.

Q. The director may implement a procedure for the issuance of a license with a licensing period of two years.

4-203.01. Interim permit; fee; rules

A. The director may issue an interim permit to the applicant for a license of the same series, or for the replacement of a hotel-motel license with a restaurant license, at the same premises whether that license is transferrable or nontransferable and any of the following conditions exists:

1. The director has good cause to believe the licensee is no longer in possession of the licensed premises.
2. The license for such premises was surrendered pursuant to rules of the department.
3. The applicant for the interim permit filed with the department an application for the issuance of a license of the same series of nontransferable license or the transfer or replacement of a transferable license of the same series, or for the replacement of a hotel-motel license with a restaurant license, at the same premises.

B. The application for the interim permit shall be accompanied by an interim permit fee of one hundred dollars.

C. An interim permit issued by the director pursuant to this section shall be for a period of not more than one hundred five days and shall not be extended except as provided in subsection D of this section. An interim permit is a conditional permit and authorizes the holder to sell such alcoholic beverages as would be permitted to be sold under the privileges of the license for which application has been filed with the department.

D. Notwithstanding subsection C of this section, if the director extends the time limit for action by the department in connection with a license issuance or transfer pursuant to section 4-201.01, subsection B, the director shall issue an additional interim permit for a period equal to such extension unless either:

1. No interim permit has previously been issued.
2. For good cause shown the director denies the additional interim permit.

E. Notwithstanding any other law, an interim permit may be canceled or suspended summarily at any time, if the director determines that good cause for such cancellation or suspension exists. There shall be no appeal from such cancellation or suspension of an interim permit to the board. The board may cancel an interim permit on applications that have been disapproved by the board. The cancellation or suspension of an interim permit may be appealed directly to the superior court.

F. Application for an interim permit shall be on such form as the director shall prescribe. If an application for an interim permit is withdrawn before issuance or is refused by the director, the fee that accompanies such application shall be refunded.

G. If an application for transfer of a license, person to person, or nontransferable spirituous liquor license is denied or an interim permit is revoked, suspended or expires, the licensee may request the return of the surrendered license that has been issued for such premises.

H. The director may prescribe rules governing the issuance of interim permits under this section.

I. The director may deny an interim permit in situations in which a current licensee holds a license described in section 4-209, subsection B, paragraph 12 and the current license is not in compliance with section 4-205.02.

4-203.02. Special event license; rules

A. The director may issue on a temporary basis:

1. A daily on-sale special event license authorizing the sale of spirituous liquor for consumption on the premises where sold. The fee for the license is twenty-five dollars per day. The director shall transfer the monies collected to the department of health services for the purpose prescribed in title 36, chapter 18, article 2.
2. A daily off-sale special event license authorizing a charitable auction for the sale of spirituous liquor for consumption off premises.

B. Before the director may issue a temporary special event license, a special event that is to occur at an otherwise unlicensed location or by a licensee at a location that is not fully within the licensee's existing licensed premises must be approved by the board of supervisors of a county if the event is to be held in an unincorporated area or by the governing body of the city or town if the event is to be held in a city or town.
C. The approval process prescribed in this section does not apply to physical locations that are fully within premises licensed pursuant to this title.
D. A physical location, other than a physical location that is owned, operated, leased, managed or controlled by the United States, this state or a city, town or county of this state, that is not licensed pursuant to this title may not be issued more than twelve special event licenses during the same calendar year. All applications for a special event license issued pursuant to this subsection must be submitted to the department at least ten days before the scheduled event.
E. The director may only issue the special event license to a political party or campaign committee supporting a candidate for public office or a ballot measure, an organization formed for a specific charitable or civic purpose, a fraternal organization in existence for over five years with a regular membership or a religious organization.
F. The director may issue a special event license concurrently with a wine festival license and a craft distillery festival license and may approve the location of the wine festival license within an excluded area of a special event license specifically described in each license. Notwithstanding section 4-244, paragraphs 13 and 19, both licenses shall permit the presence of purchased spirituous liquor in the possession of the purchaser.
G. An organization selling spirituous liquor under a special event license shall purchase the spirituous liquor from the holder of a license authorized to sell off-sale or a licensed wholesaler. In the case of a nonprofit organization that has obtained a special event license for the purpose of charitable fund-raising activities, the nonprofit organization may receive the spirituous liquor from a wholesaler, farm winery, microbrewery or producer as a donation, except that a licensee licensed pursuant to subsection A, paragraph 2 of this section may receive spirituous liquor from a donor when the donor receives no remuneration or payment of any kind, directly or indirectly, other than any tax benefits that might result.
H. An organization that is issued a license pursuant to subsection A, paragraph 2 of this section shall receive at least seventy-five per cent of the gross receipts of the auction. Up to twenty-five per cent of the gross receipts of a special event auction conducted pursuant to subsection A, paragraph 2 of this section may be used to pay reasonable and necessary expenses incurred in connection with the auction. All expenses shall be supported by written contracts, invoices or receipts, which shall be made available to the director on request.
I. The director may adopt those rules the director determines are necessary to implement and administer this section including a limitation on the number of times during a calendar year a qualified organization may apply for and be issued a license under this section. The qualified organization issued a license pursuant to subsection A, paragraph 1 of this section must receive at least twenty-five per cent of the gross revenues of all spirituous liquor sold at the special events, which shall be supported by a contract between the parties to be supplied at the time of application.
J. An organization that is issued a license pursuant to subsection A, paragraph 2 of this section shall not sell more than twenty cases of spirituous liquor annually under a special event license.
K. Section 4-201 does not apply to the licenses provided for under this section.
L. A licensed wholesaler may donate spirituous liquor directly to an organization that is issued a license pursuant to subsection A of this section. The licensed wholesaler shall in such instances issue a net zero cost billing invoice in the name of the special event licensee. All licensees making or receiving spirituous liquor donations remain subject to the applicable limitations and requirements set forth in this title and in the rules adopted by the department.
M. A licensed wholesaler may temporarily leave a delivery vehicle and other items of equipment necessary for the sale or service of spirituous liquor on the premises of a licensed special event for the duration of the event and up to one business day before and after the event.

N. A licensed wholesaler may leave spirituous liquor products at a special event if the products are properly described on a preliminary billing invoice from the wholesaler that is issued in the name of the special event licensee. The licensed wholesaler has up to five business days after the special event ends to make any necessary billing adjustments and issue a final billing invoice to the special event licensee.

4-203.03. Wine festival license; wine fair license; fee

A. The director, subject to the approval of the board of supervisors for events to be held in an unincorporated area or the governing body of a city or town for events to be held in a city or town, may issue up to fifty wine festival licenses for each calendar year for each licensed farm winery, for up to a total of one hundred fifty calendar days per winery, authorizing sampling of farm winery products on the wine festival premises, the sale of the products for consumption on the wine festival premises and the sale of the products in original containers for consumption off the wine festival premises. The fee for a farm winery wine festival license is fifteen dollars per day for each event.

B. Any farm winery may apply for a wine festival license pursuant to this section.

C. With the permission of the fair organizers, any farm winery is authorized to allow sampling of farm winery products on the fair premises, the sale of the products for consumption on the fair premises and the sale of the products in original containers for consumption off of the fair premises at any sanctioned county or state fair. The fee for a farm winery fair license is fifteen dollars per day for each event.

D. Section 4-201 does not apply to the licenses provided for under this section.

4-203.04. Direct shipment license; issuance; fee; requirements; penalties; cease and desist orders

A. The director may issue a direct shipment license to a person who is engaged in business as a distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor if the person is licensed in the state where the person's principal place of business is located and the director determines that the person is capable and reliable and is qualified to hold a direct shipment license.

B. A person shall apply for a direct shipment license on a form prescribed by the director. The director may charge an application fee. In addition to other matters required by the director, an application for a direct shipment license shall include:

1. The address of the premises where the applicant's principal place of business is located and a copy of the applicant's spirituous liquor license in that state.
2. The name, address and telephone number of an officer of the applicant who is authorized to represent the applicant before the director.
3. A complete and full disclosure by the applicant and by any officer, director, administrator or controlling person of the applicant of any criminal convictions in any state or foreign jurisdiction within the five years immediately preceding the application.
4. The names and addresses of the wholesalers licensed in this state through which the applicant will ship spirituous liquor into or within this state.
5. The number of individual orders of spirituous liquor, if any, that the applicant shipped to wholesalers in this state during the previous three years and the names and addresses of each wholesaler that received the shipments.
6. A statement that the applicant acknowledges that shipments by the applicant of spirituous liquor into or within this state contrary to this section will result in the immediate suspension of the applicant's direct shipment license.

C. The director may refuse to issue a direct shipment license for good cause. After a hearing, the director may suspend or revoke a direct shipment license for good cause. The director shall not issue a direct shipment license to any person who:

1. Has had a direct shipment license or any license to deal in spirituous liquor revoked in this state or any other state within one year preceding the application.

2. Has been convicted of a felony in this state or any other state or has been convicted of an offense in another state that would be a felony if convicted in this state within five years preceding the application.
D. A direct shipment license is valid for three years. Direct shipment licenses may not be renewed or transferred. A person who holds a direct shipment license may apply for a new license not more than ninety days before expiration of the person's current license.
E. A resident of this state who is twenty-one years of age or older may place an order in person, by telephone, mail or catalog or on the internet for spirituous liquor for the person's own personal use with a person who holds a direct shipment license.
F. A person who holds a direct shipment license shall ensure that shipments of spirituous liquor pursuant to this section are made in conformance with all applicable provisions of this title and rules adopted pursuant to this title. A direct shipment licensee who violates this title or rules adopted pursuant to this title is subject to a civil or criminal penalty and suspension or revocation of the person's license.
G. A person who holds a direct shipment license shall deliver spirituous liquor ordered pursuant to subsection E of this section to a wholesaler that is licensed in this state. The wholesaler shall pay all luxury taxes imposed on the shipment pursuant to title 42, chapter 3 to the department of revenue and shall deliver the liquor to a retailer with off-sale privileges that is licensed in this state.
H. The licensed retailer shall deliver the spirituous liquor or shall arrange for the delivery of the spirituous liquor to the person who placed the order and shall collect and pay to the department of revenue all transaction privilege taxes imposed pursuant to title 42, chapter 5. The retailer shall:
1. Ensure that:
(a) The person making the delivery is twenty-one years of age or older.
(b) The delivery occurs only during the hours that spirituous liquor may be lawfully served in this state.
(c) Deliveries are not made to persons who are obviously intoxicated or are otherwise disorderly.
(d) The person accepting the delivery is twenty-one years of age or older and exhibits an acceptable written instrument of identification pursuant to section 4-241.
2. Make a record of the delivery at the time of delivery on a form approved by the director of the department of liquor licenses and control. The record shall be retained by the retailer for at least two years and shall include the following information:
(a) The business name, address and license number of the retailer.
(b) The date and time of delivery.
(c) The address where the delivery occurred.
(d) The type, brand and amount of the spirituous liquor delivered.
(e) The printed name and signature of the person making the delivery.
(f) The printed name and signature of the person accepting the delivery, along with the type and serial number of the written identification the person accepting delivery presented.
(g) The age of the person accepting delivery.
3. Refuse to complete a delivery if the retailer believes that the delivery would violate any applicable provision of this title.
I. If the director has reasonable cause to believe that a person who is licensed pursuant to this section is acting in violation of this section, the director may serve a cease and desist order requiring the person to cease and desist the violation. The director may impose a civil penalty of not more than one hundred fifty thousand dollars per violation against a person who knowingly violates a cease and desist order issued pursuant to this section.
J. Notwithstanding any other law, a person may ship wine as long as all of the following apply:
1. The wine was purchased while the purchaser was physically present at the winery.
2. The purchaser of the wine provided the winery verification of legal age to purchase alcohol.
3. The shipping container in which the wine is shipped is marked to require the signature on delivery of an adult who is of legal age to purchase alcohol and delivery confirmation.
4. The wine is for personal use only and not for resale.
5. The winery ships to a residential or business address other than a premises licensed pursuant to this title.

6. The purchaser could have carried the wine lawfully into or within this state.
7. The winery ships not more than two cases of wine per winery to the purchaser in any calendar year.
K. Section 4-201 does not apply to licenses issued pursuant to this section.
L. Common carriers other than railroads as defined in section 40-201 that ship spirituous liquor in this state shall:
1. Keep records of spirituous liquor shipped to persons in this state, including the shipper's company and address, the recipient's name and address, the shipment and delivery dates and the weight of spirituous liquor shipped.
2. Remit the records on request of the department.

4-203.05. Licenses held in nonuse status
A licensee who holds a license in nonuse status shall not be responsible for and shall not accrue any municipal license fee or tax or municipal renewal fee or tax attributed to the time that the license is properly held in nonuse status.

4-204. Personal representative or fiduciary acting for licensee
A. A person acting as administrator, executor or guardian of the estate of any licensee or a person acting as receiver for any licensee, trustee of the bankrupt estate of any licensee or assignee for the benefit of creditors of a licensee is authorized, upon receiving permission from the director to sell and deal in spirituous liquors under authority of the license issued to the licensee for whom the person is acting for a period not exceeding twenty-four months from the date of the appointment of such person as administrator, executor, guardian, receiver, trustee or assignee for the benefit of creditors.
B. The provisions of this section shall not apply if at any time during the twenty-four months an administrator, executor or guardian of the estate of a licensee who has received the permission from the director as provided in subsection A of this section transfers the license to the surviving spouse or the guardian of the minor child of the licensee.
C. A person, authorized representative or assignee, meeting the qualifications of section 4-202, not licensed under the provisions of this chapter, owning or possessing spirituous liquor as a result of enforcement of a security interest in the property of a wholesaler licensed under this chapter is authorized, upon receiving permission from the director, to sell such spirituous liquor to a licensee authorized to sell spirituous liquor for resale. Sections 4-201, 4-203 and 4-243.01 shall not apply to nor restrict the authority granted under this provision.

4-205. Issuance of club license; regulatory provisions; revocation
A. The director may issue one club license to any club as defined in section 4-101.
B. The holder of a club license is authorized to sell and serve alcoholic beverages for consumption only within the licensed establishment owned, leased or occupied by the club, and only to bona fide members of the club, and to serve and sell to members' bona fide guests. Attendance at private clubs is limited to enrolled members of the club and their spouses, families and bona fide guests. Admitted nonmember guests shall not exceed more than fifty per cent of attendance during any month. This provision shall not limit the ability of a member or the club to host wedding receptions, group meetings, civic meetings, scheduled social functions, including bingo games and other member or club hosted functions where individuals are not admitted on the basis of being a guest of a member of the club and attendance at the event shall not be considered in computing the fifty per cent requirement.
C. No member and no officer, agent or employee of a club licensee shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any of the profits from the revenue producing activities of the club or from the distribution or sale of alcoholic beverages to the members of the club or to its guests, beyond the amount of the salary as fixed and voted on at a regular meeting by the

members of the club licensee or by its governing body out of the general revenue of the licensee, nor shall such salaries or compensation be in excess of reasonable compensation for the services actually performed.
D. The director may revoke a club license issued pursuant to this section in any case in which the licensee ceases to operate as a bona fide club as defined in section 4-101.
E. No club may hold a spirituous liquor license other than one issued pursuant to this section, except that any club which on January 1, 1975 holds a spirituous liquor license other than one issued pursuant to this section may use such license until such time as the license is revoked or reverted.

4-205.01. Hotel-motel license; issuance; revocation
A. The director may issue a hotel-motel license to any hotel or motel in this state that has in conjunction with such hotel or motel a restaurant where food is served.
B. The director shall issue the license in the name of the hotel or motel upon application for the license by the owner or lessee of the motel or hotel, provided the applicant is otherwise qualified to hold a spirituous liquor license. The holder of such license is subject to the penalties prescribed for any violation of the law relating to alcoholic beverages.
C. The holder of a hotel-motel license may sell and serve spirituous liquors solely for consumption on the licensed premises. For the purpose of this subsection, "licensed premises" shall include all public and private rooms, facilities and areas in which spirituous liquors may be sold or served in the normal operating procedures of the hotel or motel.
D. In addition to other grounds prescribed in this title upon which a license may be revoked, the director may revoke a hotel-motel license issued pursuant to this section in any case in which the licensee ceases to operate as a hotel or motel, as prescribed in subsection A of this section.
E. For the purposes of this section, the licensee shall be subject to the standards and qualifications of a restaurant licensee as provided in section 4-205.02. If an independent person or entity manages and supervises the sale and service of spirituous liquor at the premises pursuant to section 4-243.04, subsection A, paragraph 3, the person or entity may contract with the owner of the premises to sell and serve food on the premises. For the purpose of determining whether forty per cent of the licensee's gross revenues are derived from the sale of food, sales of food made by the owner of the premises are deemed sales of food made by the licensee.

4-205.02. Restaurant license; issuance; regulatory provisions; expiration; definitions
A. The director may issue a restaurant license to any restaurant in this state that is regularly open for the serving of food to guests for compensation and that has suitable kitchen facilities connected with the restaurant for keeping, cooking and preparing foods required for ordinary meals.
B. The director shall issue the license in the name of the restaurant upon application for the license by the owner or lessee of the restaurant, provided the applicant is otherwise qualified to hold a spirituous liquor license. The holder of such license is subject to the penalties prescribed for any violation of the law relating to alcoholic beverages.
C. The holder of a restaurant license may sell and serve spirituous liquors solely for consumption on the licensed premises. For the purpose of this subsection, "licensed premises" may include rooms, areas or locations in which the restaurant normally sells or serves spirituous liquors pursuant to regular operating procedures and practices and that are contiguous to the restaurant or a noncontiguous patio pursuant to section 4-101, paragraph 26. For the purposes of this subsection, a restaurant licensee must submit proof of tenancy or permission from the landowner or lessor for all property to be included in the licensed premises.
D. In addition to other grounds prescribed in this title on which a license may be revoked, the director may require the holder of a restaurant license issued pursuant to this section to surrender the license in any case in which the licensee ceases to operate as a restaurant, as prescribed in subsection A of this

section. The surrender of a license pursuant to this subsection does not prevent the director from revoking the license for other grounds prescribed in this title or for making deliberate material misrepresentations to the department regarding the licensee's equipment, service or entertainment items or seating capacity in applying for the restaurant license.
E. Neither the director nor the board may initially issue a restaurant license if either finds that there is sufficient evidence that the operation will not satisfy the criteria adopted by the director for issuing a restaurant license described in section 4-209, subsection B, paragraph 12. The director shall issue a restaurant license only if the applicant has submitted a plan for the operation of the restaurant. The plan shall be completed on forms provided by the department and shall include listings of all restaurant equipment and service items, the restaurant seating capacity and other information requested by the department to substantiate that the restaurant will operate in compliance with this section.
F. The holder of the license described in section 4-209, subsection B, paragraph 12 who intends to alter the seating capacity or dimensions of a restaurant facility shall notify the department in advance on forms provided by the department.
G. The director may charge a fee for site inspections conducted before the issuance of a restaurant license.
H. For the purposes of this section:
1. "Gross revenue" means the revenue derived from all sales of food and spirituous liquor on the licensed premises, regardless of whether the sales of spirituous liquor are made under a restaurant license issued pursuant to this section or under any other license that has been issued for the premises pursuant to this article.
2. "Restaurant" means an establishment that derives at least forty per cent of its gross revenue from the sale of food, including sales of food for consumption off the licensed premises if the amount of these sales included in the calculation of gross revenue from the sale of food does not exceed fifteen per cent of all gross revenue of the restaurant.

4-205.03. Government license; issuance; regulatory provisions; agreements with coliseum concessionaires; definitions
A. The department may issue a government license to any state agency, state board, state commission, county, city, town, community college or state university, the national guard or the Arizona exposition and state fair board on application authorized by the governing body of the state agency, state board, state commission, county, city, town, community college or state university, the national guard or the Arizona exposition and state fair board.
B. If the department issues the license, it shall be issued in the name of the state agency, state board, state commission, county, city, town, community college or state university, the national guard or the Arizona coliseum and exposition center. No application shall be filed unless authorized by the respective governing body. The application shall designate for each location a manager or other individual responsible for administering the license. The state agency, state board, state commission, county, city, town, community college or state university, the national guard or the Arizona exposition and state fair board shall give notice to the department within ten days of any change in the designee. The state agency, state board, state commission, county, city, town, community college or state university, the national guard or the Arizona coliseum and exposition center to which a license is issued is subject to the fine or penalty prescribed for any violation of the statutes relating to alcoholic beverages.
C. The holder of a government license may sell and serve spirituous liquors solely for consumption on the premises for which the license is issued. A separate license is required for each premises on which spirituous liquors are served. A single premises licensed under this section may consist of not more than one dock area that is designated by a city or town and that is situated on a lake owned by the city or town and not more than thirty boats that are operated on the lake. A dock and boats that comprise a premises under this subsection shall be operated in compliance with subsection G of this section.
D. A governing body in possession of a government license may by appropriate legislation or rule authorize the use of the license pursuant to a concession agreement approved by the governing body.

E. The department may adopt rules in order to administer this section.
F. Any agreement entered into by the Arizona exposition and state fair board allowing an indicated concessionaire to serve alcoholic beverages pursuant to this section shall contain a provision requiring the concessionaire to do both of the following:
1. Fully indemnify and hold harmless this state and any of its agencies, boards, commissions, officers and employees against any liability for loss or damage incurred either on or off state property and resulting from the negligent serving of alcoholic beverages by the concessionaire or the concessionaire's agents or employees.
2. Post a surety bond in favor of this state in an amount determined by the Arizona exposition and state fair board to be sufficient to indemnify this state against the potential liability or name this state as an additional insured in a liability policy that provides sufficient coverage to indemnify this state as determined by the Arizona exposition and state fair board.
G. The following apply to the operation of a dock and boats as a licensed premises pursuant to subsection C of this section:
1. Liquor may be sold only for consumption on the premises in conjunction with consumption of food.
2. Liquor shall not be served or consumed on the dock. Liquor shall not be served on a boat earlier than fifteen minutes before the boat is scheduled to depart from the dock and shall not be served after a boat returns to the dock.
3. A person shall not be served more than thirty-two ounces of beer, one liter of wine or four ounces of distilled spirits while the person is on a boat.
4. A person shall not bring spirituous liquor onto a boat other than liquor purchased by the licensee or a concessionaire for resale under the provisions of this title.
5. The pilot of each boat, all crew members and all persons who sell or serve spirituous liquor on each boat are deemed employees of the licensee for purposes of this title.
6. The pilot of each boat shall either have a current and valid coast guard operator's license or shall have successfully completed a safety and operator training course approved by the city or town.
7. Spirituous liquor shall not be served, consumed or possessed by a customer on the boat between the hours of 11:00 p.m. and 5:00 p.m.
8. All provisions of this title and rules adopted pursuant to this title that are not inconsistent with this section apply to sales and consumption of spirituous liquor on the licensed premises.
H. For the purposes of this section:
1. "Arizona coliseum and exposition center" includes all property under the control of the Arizona exposition and state fair board as provided in section 3-1001.
2. "Boat" means a seaworthy vessel that is designed to carry and that is capable of carrying not less than fifteen nor more than forty-five passengers, that has a displacement of not more than ten tons and that possesses a current coast guard certificate.
3. "Community college" has the same meaning prescribed in section 15-1401.
4. "State university" means institutions as described in section 15-1601.

4-205.04. Farm winery license; issuance; regulatory provisions; retail site; fee
A. The director may issue a farm winery license to any person who meets the requirements of subsection C of this section. Each location that engages in producing or manufacturing these products must obtain a separate farm winery license. The licensee may not transfer the farm winery license from person to person or from location to location.
B. An applicant for a farm winery license, at the time of filing the application for the license, shall accompany the application with the license fee. Persons holding a farm winery license shall report annually at the end of each calendar year, at such time and in such manner as the director may prescribe, the amount of wine produced or manufactured by them during the calendar year. In addition to any provision of this title, if the total amount of wine produced or manufactured during the year exceeds the

amount permitted annually by the license, the licensee shall apply for and receive a producer's license only upon surrender of the farm winery license or licenses.
C. A person may be licensed as a farm winery to sell wine produced or manufactured if in a calendar year it produces at least two hundred gallons and not more than forty thousand gallons of wine and if the winery either holds a winery permit issued by the United States alcohol and tobacco tax and trade bureau or has a contract pursuant to subsection E of this section for the production or manufacturing of wine from grapes or other fruit grown on at least five producing acres of land owned or controlled by the applicant and the land has been devoted to fruit growing for at least three consecutive calendar years. A licensed farm winery may make sales and deliveries of wine only as specifically provided in this section and as follows:
1. A licensed farm winery may make sales and deliveries of wine to wholesalers licensed to sell wine under this title.
2. A licensed farm winery may serve wine produced or manufactured on the premises for the purpose of sampling the wine. The wine may include wine produced pursuant to subsections D and E of this section.
3. A representative of the licensed farm winery may consume small amounts of the products of the licensed farm winery on the premises for the purpose of sampling the wine. The wine may include wine produced pursuant to subsections D and E of this section.
4. A licensed farm winery may sell to a consumer physically present on the premises wine produced or manufactured on the premises in the original container for consumption on or off the premises. The wine may include wine produced pursuant to subsections D and E of this section.
5. A licensed farm winery may purchase and sell wine produced by another licensed farm winery for consumption on or off the premises only if the retail sale is to a consumer physically present on the premises of the farm winery, except that the sales of wine produced by another winery may not exceed twenty per cent of the farm winery's sales by volume. The percentage limitation shall not apply to wine produced pursuant to subsections D and E of this section.
6. If the licensed farm winery is not otherwise engaged in the business of a distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor in any jurisdiction, the licensed farm winery may hold licenses prescribed in section 4-209, subsection B, paragraph 12 on the licensed farm winery premises or other retail premises. Except as provided in paragraph 5 of this subsection, the licensed farm winery shall purchase all other spirituous liquor for sale at the on-sale retail premises from wholesalers that are licensed in this state, except that a licensed farm winery may:
(a) Purchase wine from other farm wineries pursuant to paragraph 7 of this subsection.
(b) Make deliveries of the wine that the farm winery produces to the farm winery's own commonly controlled retail licensed premises.
7. A licensed farm winery that produces not more than twenty thousand gallons of wine in a calendar year may make sales and deliveries of the wine that the licensed farm winery produces to on-sale and off-sale retailers.
8. Notwithstanding section 4-244, paragraphs 3 and 7, an on-sale or off-sale retailer may purchase and accept delivery of wine from a licensed farm winery pursuant to paragraph 7 of this subsection.
9. A licensed farm winery that produces not more than twenty thousand gallons of wine in a calendar year may make sales and deliveries of wine that the licensed farm winery produces to consumers off of the licensed premises and that is ordered by telephone, mail, fax or catalogue, through the internet or by other means if all of the following apply:
(a) The purchaser of the wine provided the licensed farm winery with verification of the purchaser's legal age to purchase alcohol.
(b) The shipping container in which the wine is shipped is marked to require the signature on delivery of an adult who is of legal age to purchase alcohol and delivery confirmation.
(c) The wine is for personal use only and not for resale.
(d) The wine is delivered by the licensed farm winery or shipped by the licensed farm winery by a common carrier to a residential or business address other than a premises licensed pursuant to this title.
(e) The purchaser could have carried the wine lawfully into or within this state.

(f) The delivery is made by a person who is at least twenty-one years of age.
(g) The farm winery shall collect payment for the price of the spirituous liquor no later than at the time of delivery.
10. A licensed farm winery may make sales and deliveries as expressly permitted by sections 4-203.03, 4-203.04 and 4-244.04.
D. On application by one or more persons, the director may approve applications for grouping two or more farm winery licenses at one location under a plan of alternating proprietorships if a licensed winery has received approval of the alternating proprietorship by the United States alcohol and tobacco tax and trade bureau and the participating wineries operate under the regulations and guidelines that are issued by the United States alcohol and tobacco tax and trade bureau. Each participating winery shall be responsible for filing all reports that relate to its wine production or manufacturing with the United States alcohol and tobacco tax and trade bureau and the department.
E. A person otherwise qualified to receive a farm winery license may enter into a custom crush arrangement where a licensed winery produces or manufactures wine from grapes or other fruit supplied by the person. The winery receiving the fruit shall be licensed by the United States alcohol and tobacco tax and trade bureau and the department and shall be responsible for filing all reports that relate to its wine production or manufacturing with the United States alcohol and tobacco tax and trade bureau and the department. Each person supplying the grapes or other fruit shall first apply for and receive a farm winery license and shall report to the department all volumes of wine from its custom crush arrangements, which shall not be allocated to the gallonage of the receiving winery.
F. On application by a farm winery licensee, the director may authorize a farm winery licensee to operate up to two remote tasting and retail premises if:
1. The wine sold at the premises is limited to wine produced or manufactured by the licensed farm winery and wines produced or manufactured by other licensed farm wineries, including wines produced or manufactured pursuant to subsections D and E of this section. The farm winery may sell wine to a consumer physically present on the premises for consumption on or off the premises. Sales of wines not produced or manufactured by the farm winery shall be limited to no more than twenty per cent of the total sales by volume at that location. The percentage limitation shall not apply to wine produced pursuant to subsections D and E of this section.
2. The farm winery licensee:
(a) Remains responsible for the premises.
(b) Obtains approval for the premises from the local governing body before submitting an application to the department. A copy of an order from the local governing body recommending approval of the premises must be filed with the department as part of the application.
(c) Does not sublease the premises.
(d) Has an agent who is a natural person who meets the qualifications of licensure in this state.
(e) Meets the qualifications for a license pursuant to section 4-203, subsection A.
G. A farm winery licensee may hold a craft distillery license issued pursuant to section 4-205.10. The farm wine and craft distillery licensee may only produce distilled spirits up to a gallonage of one thousand gallons in a calendar year from fruit processed at the winery for the primary purpose of making wine. The farm wine and craft distillery licensee is subject to all other requirements of this section and section 4-205.10. The farm winery may provide sampling and sales of the distilled spirits pursuant to section 4-205.10, subsection C, paragraphs 2 and 3 on the same premises as the wine sampling and retail sales.
H. The farm winery is liable for any violation committed in connection with any sale or delivery of the wine. The rules adopted by the director pursuant to section 4-203, subsection J shall apply to the delivery of wine under subsection C, paragraph 9 of this section. An act or omission of any person who makes a sale or delivery of wine for a licensee under subsection C, paragraph 9 of this section is deemed to be an act or omission of the licensee for the purposes of section 4-210, subsection A, paragraph 9.
I. A farm winery that sells or delivers wine pursuant to this section shall:
1. Pay to the department of revenue all luxury taxes imposed pursuant to title 42, chapter 3 and all transaction privilege or use taxes imposed pursuant to title 42, chapter 5.

2. File all returns or reports required by law.
J. A delivery of wine by a farm winery to a purchaser in this state is a transaction deemed to have occurred in this state.
K. The director shall adopt rules in order to administer this section.
L. The director may charge an additional farm winery license fee adopted pursuant to section 4-209 for the issuance of licenses, authorizations or approvals pursuant to subsections D, E and F of this section.

4-205.05. Disposal of seized or recovered liquor
A. The director may issue a temporary permit authorizing the disposal at public auction of spirituous liquor that has been seized by any agency of this state, the federal government, any political subdivision of this state, any financial institution as defined in section 6-101 that has a security interest in a license or the federal government pursuant to statute. A bid at a public auction shall not be accepted from a licensee if the spirituous liquors offered for sale at the auction were seized from that licensee. The director shall issue the permit only if presented with proper documents of seizure by the appropriate official. The director may dispose of seized spirituous liquor in whole or in part by public auction, by providing the spirituous liquor to law enforcement for training purposes only, or both, or by authorizing a qualified person to recycle the spirituous liquor.
B. Spirituous liquor with a stated expiration date on the label shall not be offered for sale at public auction after the expiration date and shall either be destroyed or disposed of as provided in this section. The licensed wholesaler that distributes the spirituous liquor brand in that sales territory may, but is not required to, accept a return of the liquor at no cost for disposal or to enable it to be returned to the supplier.

4-205.06. Hotel or motel minibars; rules; definitions
A. Notwithstanding any other statute, a hotel or motel may sell spirituous liquor in sealed containers in individual portions to its registered guests at any time by means of a minibar located in the guest rooms of those registered guests, if all of the following conditions are met:
1. Before providing a key, magnetic card or other similar device required to attain access to the minibar in a particular guest room to the registered guest, or before otherwise providing access to the minibar to the registered guest, the licensee verifies that each registered guest to whom a key, magnetic card or similar device is provided or to whom access is otherwise provided is not a person under the legal drinking age.
2. All employees handling the spirituous liquors to be placed in the minibar in any guest room, including an employee who inventories or restocks and replenishes the spirituous liquors in the minibar, are at least nineteen years of age.
3. The minibar is not replenished or restocked with spirituous liquor between the hours of 2:00 a.m. and 6:00 a.m.
4. The minibar is located on the premises of a person who has been issued an on-sale retailer's license.
5. The minibar contains no more than thirty individual portions of spirituous liquor at any one time.
B. A minibar may be part of another cabinet or similar device, whether refrigerated in whole or in part or nonrefrigerated, from which nonalcoholic beverages or food may be purchased by the guests in hotel or motel guest rooms. The portion of the cabinet or similar device in which spirituous liquors are stored shall comply with the requirements of this section.
C. The director may prescribe rules to regulate the use of a minibar including rules on the size of containers of spirituous liquors and may by rule reduce from thirty the number of containers of spirituous liquor placed in the minibar.
D. For the purposes of this section:
1. "Hotel" or "motel" means an establishment that is licensed to sell spirituous liquors and that contains guest room accommodations with respect to which the predominant relationship existing between the occupants of the rooms and the owner or operator of the establishment is that of innkeeper and guest. For

the purposes of this paragraph, the existence of other legal relationships as between some occupants and the owner or operator is immaterial.
2. "Minibar" means a closed container, either refrigerated in whole or in part or nonrefrigerated, where access to the interior is restricted by means of a locking device that requires the use of a key, magnetic card or similar device.

4-205.07. Conveyance license for excursion boats
A. The director may issue a conveyance license to the owner or lessee of an excursion boat if all of the following conditions apply:
1. The applicant for the license shall designate a dock as the home port for the boat.
2. The notice of the license application shall be prominently placed on the designated dock that is the home port.
3. The boat shall have a displacement of not less than fifty tons and shall have a passenger capacity of eighty persons or more.
4. The boat shall have a current coast guard certification.
B. The licensee or employee shall comply with each of the following requirements:
1. Liquor sales shall be for on premises consumption only.
2. No liquor sales shall be made in dock earlier than thirty minutes prior to departure or later than thirty minutes after docking.
3. No person may be permitted to bring spirituous liquor onto the boat except that purchased by the licensee or employee for resale according to law.
4. No boat captain or crew member shall consume spirituous liquor while serving as crew member.
C. The director may adopt rules to administer this section and to prevent violations of this title.

4-205.08. Microbrewery license; issuance; regulatory provisions; retail site
A. The director may issue a microbrewery license to any microbrewery. Each location that engages in producing, manufacturing and bottling these products must obtain a separate microbrewery license. The licensee may not transfer the microbrewery license from person to person or from location to location.
B. An applicant for a microbrewery license, at the time of filing the application for the license, shall accompany the application with the license fee. Persons holding a microbrewery license shall report annually at the end of each calendar year, at such time and in such manner as the director may prescribe, the amount of beer produced or manufactured by them during the calendar year and the amount delivered pursuant to subsection D, paragraph 4, subdivision (b) of this section. If the total amount of beer that is produced or manufactured during the calendar year exceeds the amount permitted annually by the license, the licensee shall apply for and receive a producer's license only on surrender of the microbrewery license or licenses and shall have no continuing rights as a microbrewery under this section. On the surrender of the microbrewery license or licenses, the licensee shall transfer, surrender or otherwise relinquish control of all of its retail licenses located remotely from a microbrewery.
C. Notwithstanding any other law, a licensed microbrewery may:
1. Sell beer produced or manufactured on the premises for consumption on or off the premises.
2. Make sales and deliveries of beer that the microbrewery produces or manufactures to persons licensed to sell beer under this title through wholesalers licensed under this title or as provided in subsection D, paragraph 5, subdivision (a) or (b) of this section.
3. Make sales and deliveries of beer that the microbrewery produces or manufactures to persons licensed to sell beer in another state if lawful under the laws of that state.
4. Serve beer produced or manufactured on the premises for the purpose of sampling the beer.
5. Sell beer produced or manufactured by other microbreweries for consumption only on the premises of the licensee, except that the sales percentage of beer from other microbreweries may not exceed twenty percent of the licensee's annual sales of beer by volume at the premises. If the other microbrewery has

established a distribution relationship with one or more wholesalers who are licensed under this title, the beer shall be purchased through those wholesalers.
D. A licensed microbrewery is subject to all of the following requirements:
1. The microbrewery shall produce or manufacture not less than five thousand gallons of beer in each calendar year following the first year of operation.
2. The microbrewery shall not produce or manufacture more than six million two hundred thousand gallons of beer in a calendar year.
3. If retail operations are conducted in conjunction with the microbrewery, the microbrewery may sell other spirituous liquor products if the microbrewery holds an on-sale retail license for a bar, beer and wine bar, or restaurant. The microbrewery may be issued up to a combined total of seven retail licenses in this state whether located on or adjacent to a microbrewery or remotely from a microbrewery. The limit on the number of retail licenses applies on an aggregated basis to all microbreweries that are under common control of any person with control of the microbrewery.
4. The microbrewery may make sales and deliveries of beer that it has produced or manufactured to both:
(a) Retail licensees that meet the requirements prescribed in paragraph 3 of this subsection in any amount.
(b) Any other retail licensee in a cumulative amount not to exceed ninety-three thousand gallons in total for all licensed retailers in any calendar year.
E. A microbrewery that produces or manufactures more than one million two hundred forty thousand gallons of beer in a calendar year maintains all of the rights associated with a microbrewery license, with the exception that it shall not:
1. Apply for or receive a retail license pursuant to subsection D, paragraph 3 of this section that is located remotely from the microbrewery.
2. Make sales or deliveries of beer that it has produced or manufactured to any retail license as provided in subsection D, paragraph 4 of this section, except for its retail licenses on or adjacent to the microbrewery.
F. The gallonage amounts prescribed in subsection D, paragraph 2 and subsection E of this section apply to the aggregate manufacture or production of all microbreweries that are under common control of any person with control of the microbrewery.
G. A microbrewery that is otherwise engaged as a distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor in any jurisdiction is prohibited from holding any retail license that is located remotely from a microbrewery.
H. A microbrewery that sells or delivers beer pursuant to this section shall:
1. Pay to the department of revenue all luxury taxes imposed pursuant to title 42, chapter 3 and all transaction privilege or use taxes imposed pursuant to title 42, chapter 5.
2. File all returns or reports required by law.
I. A delivery of beer by a microbrewery to a purchaser in this state is a transaction deemed to have occurred in this state.
J. The director shall adopt rules in order to administer this section.

4-205.09. Domestic microbrewery and domestic farm winery licenses on same land; requirements
A. The director may issue a domestic microbrewery license located on the same parcel of land as a domestic farm winery subject to the following conditions:
1. The licenses of the domestic microbrewery and the domestic farm winery shall be held by different persons.
2. The domestic microbrewery and the domestic farm winery shall be located in separate buildings that are licensed separately.
3. The domestic microbrewery and the domestic farm winery may share a common tasting room and indoor and outdoor premises for tasting and for consumption of microbrewery and farm winery products.
4. The domestic microbrewery and domestic farm winery shall each comply fully with all applicable requirements prescribed in section 4-205.04 and section 4-205.08.

5. Persons who hold a domestic microbrewery license or a domestic farm winery license with combined premises under this section shall not hold any other license issued pursuant to this title.
B. A domestic microbrewery and a domestic farm winery that share a common tasting room and indoor and outdoor premises as provided in subsection A, paragraph 3 of this section may each be held liable for any violation of this title.

4-205.10. Craft distiller license; issuance; regulatory provisions; fee
A. The director may issue a craft distiller license to any person that meets the requirements of subsection C of this section. Each location that engages in producing and bottling these products must obtain a separate craft distiller license. The licensee may not transfer the craft distiller license from person to person or from location to location and may not also hold a producer's license. The licensee and all commonly controlled craft distillery licensees may not manufacture or produce more than twenty thousand gallons of distilled spirits in a calendar year. For the purposes of this section, "annual gallonage" shall be the total proof gallons of finished distilled product available for wholesale or retail sale as defined by 26 United States Code section 5002 and rules adopted pursuant to this section or its successor.
B. Persons holding a craft distiller license shall report annually at the end of each calendar year, at such time and in such manner as the director may prescribe, the amount of distilled spirits that is produced or manufactured by that licensee during the calendar year. In addition to any other provision of this title, if the total amount of distilled spirits that is produced or manufactured during the year exceeds the amount that is permitted annually by the license, the licensee shall apply for and, upon qualification, receive a producer's license only on the surrender of the craft distiller license and shall have no continuing rights as a craft distillery licensee under this section.
C. A person may be licensed as a craft distiller to sell distilled spirits that are produced or manufactured by the person if in a calendar year the person produces or manufactures not more than twenty thousand gallons of distilled spirits and may make sales and deliveries of distilled spirits only as specified in this section and subject to the following criteria:
1. A licensed craft distiller may make sales and deliveries of distilled spirits to wholesalers that are licensed to sell distilled spirits under this title.
2. A licensed craft distiller may serve distilled spirits that are produced or manufactured on the premises for the purpose of consumption on the premises and may charge for samples on the premises of the craft distiller.
3. A licensed craft distiller may sell distilled spirits that are produced or manufactured on the premises in the original container for consumption off the premises to a consumer who is physically present on the premises.
4. The licensed craft distiller may hold one license prescribed in section 4-209, subsection B, paragraph 6 or 12 on or adjacent to the licensed craft distiller premises. The licensed craft distiller shall purchase all other spirituous liquor for sale at the on-sale retail premises from wholesalers that are licensed in this state, except that a licensed craft distiller may:
(a) Purchase distilled spirits from other craft distillers that are licensed in this state. Sales of craft distillery products not produced or manufactured by the craft distiller shall be limited to no more than twenty per cent of the total sales by volume.
(b) Make deliveries of the distilled spirits that the craft distiller manufactures or produces to any commonly controlled retail licensed premises authorized pursuant to paragraph 4 of this subsection. The amount of these deliveries must be included in the limitation provided under paragraph 5 of this subsection.
5. A licensed craft distiller that produces not more than one thousand one hundred eighty-nine gallons of distilled spirits in a calendar year may make sales and deliveries of distilled spirits that the licensed craft distiller produces to on-sale and off-sale retailers.
6. Notwithstanding section 4-244, paragraphs 3 and 7, an on-sale or off-sale retailer may purchase and accept delivery of distilled spirits from a licensed craft distiller pursuant to paragraph 5 of this subsection.

7. A licensed craft distiller may make sales and deliveries of distilled spirits that the licensed craft distiller manufactures or produces to consumers off of the licensed premises if the sale or delivery is ordered by telephone, mail, fax, catalogue, the internet or by other means if all of the following conditions exist:
(a) The purchaser of the distilled spirits provided the licensed craft distiller with verification of the purchaser's legal age to purchase alcohol and a copy of same is maintained in the records of the craft distiller.
(b) The shipping container in which the distilled spirits is shipped is marked to require the signature on delivery of an adult who is of legal age to purchase alcohol and delivery confirmation.
(c) The distilled spirits are for personal use only and not for resale.
(d) The distilled spirits are shipped to a residential or business address other than a premises licensed pursuant to this title.
(e) The purchaser could have carried the distilled spirits lawfully into or within this state.
(f) A person who is at least twenty-one years of age makes the delivery.
(g) The craft distiller shall collect payment for the price of the spirituous liquor no later than at the time of delivery.
(h) Sales do not exceed the limits provided under paragraph 5 of this subsection.
D. On application by a craft distillery licensee, the director may authorize a craft distillery licensee to operate one other remote tasting and retail premises if:
1. The distilled spirits sold at the premises is limited to distilled spirits produced or manufactured by the licensed craft distillery and distilled spirits produced or manufactured by another licensed craft distillery. The craft distillery may sell to a consumer physically present on the premises distilled spirits produced by the craft distillery or by other licensed craft distilleries in the original container for consumption on or off the premises. The sales of the distilled spirits produced or manufactured by other craft distilleries shall not exceed twenty per cent of the craft distillery's total sales by volume.
2. The craft distillery licensee:
(a) Remains responsible for the premises.
(b) Obtains approval for the premises from the local governing body before submitting an application to the department. A copy of an order from the local governing body recommending approval of the premises must be filed with the department as part of the application.
(c) Does not sublease the premises.
(d) Has an agent who shall be a natural person who meets the qualifications of licensure in this state.
(e) Meets the qualifications for a license pursuant to section 4-203, subsection A.
E. The craft distiller is liable for any violation that is committed in connection with any sale or delivery of the distilled spirits. The rules adopted by the director pursuant to section 4-203, subsection J apply to the delivery of distilled spirits under subsection C of this section. An act or omission of any person who makes a sale or delivery of distilled spirits for a licensee under subsection C of this section is deemed to be an act or omission of the licensee for the purposes of section 4-210, subsection A, paragraph 9.
F. A craft distiller that sells or delivers distilled spirits pursuant to this section shall:
1. Pay to the department of revenue all luxury taxes that are imposed pursuant to title 42, chapter 3 and all transaction privilege or use taxes that are imposed pursuant to title 42, chapter 5.
2. File all returns or reports that are required by law.
G. A delivery of distilled spirits by a craft distiller to a purchaser in this state is a transaction deemed to have occurred in this state.
H. The director may adopt rules in order to administer this section.
I. The director may charge a fee adopted pursuant to section 4-209 for the issuance of a license pursuant to this section.
J. The director may issue a craft distillery license to be located on the same parcel of land as a farm winery licensed pursuant to section 4-205.04.

4-205.11. Craft distillery festival license; craft distillery fair license; craft distillery fee

A. The director, subject to the approval of the board of supervisors for events to be held in an unincorporated area or the governing body of a city or town for events to be held in a city or town, may issue up to twenty-five craft distillery festival licenses for each calendar year for each licensed craft distillery, for up to a total of seventy-five calendar days per craft distillery, authorizing sampling of craft distillery products on the craft distillery festival premises, the sale of the products for consumption on the craft distillery festival premises and the sale of the products in original containers for consumption off the craft distillery festival premises. The director may establish a per day fee for each event for a craft distillery festival license.
B. Any craft distillery may apply for a craft distillery festival license pursuant to this section.
C. With the permission of the state or county fair organizers, any craft distillery is authorized to allow sampling of craft distillery products on the fair premises, the sale of the products for consumption on the fair premises and the sale of the products in original containers for consumption off of the fair premises at any sanctioned county or state fair. The director may establish a per day fee for each event for a craft distillery fair license.
D. Section 4-201 does not apply to the licenses provided for under this section.

4-206.01. Bar, beer and wine bar or liquor store licenses; number permitted; fee; sampling privileges
A. The director shall determine the total number of spirituous liquor licenses by type and in each county. The director shall publish a listing of that information as determined by the director.
B. In each county, the director, each year, shall issue additional bar, beer and wine bar or liquor store licenses at the rate of one of each type for each additional ten thousand person increase over the population in that county as of July 1, 2010. Any licenses that have been revoked or reverted in any county after July 1, 2014 may be reissued by the director in the county of their issuance. The director may waive the issuance of any series of new, revoked or reverted licenses in a county for one year where there has been no request made to the department for the issuance of a new license of that series. For the purposes of this subsection, the population of a county is deemed to be the population estimated by the office of employment and population statistics within the Arizona department of administration as of July 1 of each year.
C. A person issued a license authorized by subsection B of this section shall pay an additional issuance fee equal to the license's fair market value that shall be paid to the state general fund. The fair market value shall be defined to mean the mean value of licenses of the same type sold on the open market in the same county during the prior twelve months, but if there are not three or more sales then the fair market value shall be determined by two appraisals furnished to the department by independent professional appraisers employed by the director.
D. The director shall employ professional appraisal services to determine the fair market value of bar, beer and wine bar or liquor store licenses.
E. If more than one person applies for an available license, a priority of applicants shall be determined by a random selection method prescribed by the director.
F. After January 1, 2011, bar licenses and beer and wine bar licenses shall be issued and used only if the clear primary purpose and actual primary use is for on-sale retailer privileges. The off-sale privileges associated with a bar license and a beer and wine bar license shall be limited to use, which is clearly auxiliary to the active primary on-sale privilege. A bar license or a beer and wine bar license shall not be issued or used if the associated off-sale use, by total retail spirituous liquor sales, exceeds thirty per cent of the sales price of on-sale spirituous liquors by the licensee at that location. For dual licenses issued pursuant to a single site or where a second license is issued to a site that already has a spirituous liquor license, other than settlement licenses issued as provided by law, the applicant shall have the burden of establishing that public convenience and the best interest of the community will be served by the issuance of the license.
G. The director may issue a beer and wine store license to the holder of a beer and wine bar license simultaneously at the same premises. An applicant for a beer and wine bar license and a beer and wine

store license may consolidate the application and may apply for both licenses at the same time. The holder of each license shall fully comply with all applicable provisions of this title. A beer and wine bar license and beer and wine store license on the same premises shall be owned by and issued to the same licensee.
H. The director may issue a beer and wine bar license to the holder of a liquor store license issued simultaneously at the same premises. An applicant for a liquor store license and a beer and wine bar license may consolidate the application and may apply for both licenses at the same time. The holder of each license shall fully comply with all applicable provisions of this title. A liquor store license and a beer and wine bar license on the same premises shall be owned by and issued to the same licensee.
I. The director may issue a restaurant license to the holder of a beer and wine bar license issued simultaneously at the same premises. An applicant for a restaurant license and a beer and wine bar license may consolidate the application and may apply for both licenses at the same time. The holder of each license shall fully comply with all applicable provisions of this title. A restaurant license and a beer and wine bar license on the same premises shall be owned by and issued to the same licensee. The limitation set forth in subsection F of this section with respect to the off-sale privileges of the beer and wine bar licenses shall be measured against the on-sales of beer and wine sales of the establishment. For the purposes of compliance with section 4-205.02, subsection H, paragraph 2, it shall be conclusively presumed that all on premises sales of spirituous liquors are made under the authority of the restaurant license.
J. An applicant for a liquor store license or a beer and wine store license and the licensee of a liquor store license or a beer and wine store license may apply for sampling privileges associated with the license. Beer and wine store premises shall contain at least five thousand square feet in order to be eligible for sampling privileges. A person desiring a sampling privilege associated with a liquor store license shall apply to the director on a form prescribed and furnished by the director. The application for sampling privileges may be filed for an existing license or may be submitted with an initial license application. The request for sampling approval, the review of the application and the issuance of approval shall be conducted under the same procedures for the issuance of a spirituous liquor license prescribed in section 4-201. After a sampling privilege has been issued for a liquor store license or a beer and wine store license, the sampling privilege shall be noted on the license itself and in the records of the department. The sampling rights associated with a license are not transferable. The director may charge a fee for processing the application for sampling privileges and a renewal fee as provided in this section. A city or town shall not charge any fee relating to the issuance or renewal of a sampling privilege. Notwithstanding section 4-244, paragraph 19, a liquor store licensee or a beer and wine store licensee that holds a license with sampling privileges may provide spirituous liquor sampling subject to the following requirements:
1. Any open product shall be kept locked by the licensee when the sampling area is not staffed.
2. The licensee is otherwise subject to all other provisions of this title. The licensee is liable for any violation of this title committed in connection with the sampling.
3. The licensed retailer shall make sales of sampled products from the licensed retail premises.
4. The licensee shall not charge any customer for the sampling of any products.
5. The sampling shall be conducted under the supervision of an employee of a sponsoring distiller, vintner, brewer, wholesaler or retail licensee.
6. Accurate records of sampling products dispensed shall be retained by the licensee.
7. Sampling shall be limited to three ounces of beer or cooler-type products, one and one-half ounces of wine and one ounce of distilled spirits per person, per brand, per day.
8. The sampling shall be conducted only on the licensed premises.
K. If a beer and wine bar license and a beer and wine store license are issued at the same premises, for the purposes of reporting liquor purchases under each license, all spirituous beverages purchased for sampling are conclusively presumed to be purchased under the beer and wine bar license and all spirituous liquor sold off-sale are conclusively presumed to be purchased under the beer and wine store license.
L. The director may issue a beer and wine store license to the holder of a bar license simultaneously at the same premises. An applicant for a beer and wine store license and a bar license may consolidate the

application and may apply for both licenses at the same time. The holder of each license shall fully comply with all applicable provisions of this title. A beer and wine store license and a bar license on the same premises shall be owned by and issued to the same licensee. If a beer and wine store license and a bar license are issued at the same premises, for purposes of reporting liquor purchases under each license, all off-sale beer and wine sales are conclusively presumed to be purchased under the beer and wine store license.

4-207. Restrictions on licensing premises near school or church buildings; definitions

A. A retailer's license shall not be issued for any premises that are, at the time the license application is received by the director, within three hundred horizontal feet of a church, within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to such school building. This section does not prohibit the renewal of a valid license issued pursuant to this title if, on the date that the original application for the license is filed, the premises were not within three hundred horizontal feet of a church, within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to such school building.

B. Subsection A of this section does not apply to a:

1. Restaurant issued a license pursuant to section 4-205.02.
2. Special event license issued pursuant to section 4-203.02.
3. Hotel-motel issued a license pursuant to section 4-205.01.
4. Government license issued pursuant to section 4-205.03.
5. Playing area of a golf course issued a license pursuant to this article.
6. A beer and wine license at a not-for-profit performing arts theatre with a permanent seating capacity of at least two hundred fifty persons.

C. Notwithstanding subsection A of this section:

1. A transferable spirituous liquor license that is validly issued and that is, on the date an application for a transfer is filed, within three hundred horizontal feet of a church, within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to such school building may be transferred person to person pursuant to sections 4-201, 4-202 and 4-203 and remains in full force until the license is terminated in any manner, unless renewed pursuant to section 4-209, subsection A.
2. A person may be issued a spirituous liquor license pursuant to sections 4-201, 4-202 and 4-203 of the same class for premises that on the date the application is filed, have a valid transferable or nontransferable license of the same series if the premises are, on the date an application for such license is filed, within three hundred horizontal feet of a church, within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to such school building and the license remains in full force until the license is terminated in any manner, unless renewed pursuant to section 4-209, subsection A.
3. A person may be issued a liquor store license pursuant to sections 4-201, 4-202, 4-203 and 4-206.01 for premises that have a beer and wine store license validly issued if the premises, on the date an application for such license is filed, are within three hundred horizontal feet of a church, within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreational area adjacent to such school building and the license remains in full force until the license is terminated in any manner, unless renewed pursuant to section 4-209, subsection A.
4. The governing body of a city or town, on a case-by-case basis, may approve an exemption from the distance restrictions prescribed in this section for a church or a public or private school that is located in an area that is designated an entertainment district by the governing body of that city or town. A city or

town with a population of at least five hundred thousand persons may designate no more than three entertainment districts within the boundaries of the city or town pursuant to this paragraph. A city or town with a population of at least two hundred thousand persons but less than five hundred thousand persons may designate no more than two entertainment districts within the boundaries of the city or town pursuant to this paragraph. A city or town with a population of less than two hundred thousand persons may designate no more than one entertainment district within the boundaries of the city or town pursuant to this paragraph.
5. A person may be issued a beer and wine store license pursuant to sections 4-201, 4-202, 4-203 and 4-206.01 for premises that have a liquor store license validly issued if the premises, on the date of an application for which the license is filed, are within three hundred horizontal feet of a church, within three hundred horizontal feet of a public or private school building with kindergarten programs or any of grades one through twelve or within three hundred horizontal feet of a fenced recreation area adjacent to such school building and the license remains in full force until the license is terminated in any manner, unless renewed pursuant to section 4-209, subsection A.
D. For the purposes of this section:
1. "Church" means a building which is erected or converted for use as a church, where services are regularly convened, that is used primarily for religious worship and schooling and that a reasonable person would conclude is a church by reason of design, signs or architectural or other features.
2. "Entertainment district" means a specific contiguous area that is designated an entertainment district by a resolution adopted by the governing body of a city or town, that consists of no more than one square mile, that is no less than one-eighth of a mile in width and that contains a significant number of entertainment, artistic and cultural venues, including music halls, concert facilities, theaters, arenas, stadiums, museums, studios, galleries, restaurants, bars and other related facilities.

4-207.01. Submission of floor plan required; alteration of licensed premises; ingress and egress to off-sale package sales in on-sale licensed premises
A. No licensee of premises approved for transfer or an original location of on-sale spirituous liquor license shall open such licensed premises to the public for sale of spirituous liquor until the licensee shall first have filed with the director floor plans and diagrams completely disclosing and designating the physical arrangement of the licensed premises, including whether the licensee intends to sell spirituous liquor by means of a drive-through or other physical feature of the licensed premises that allows a customer to purchase spirituous liquor without leaving the customer's vehicle, and shall have secured the written approval of the director to so open and operate such premises. The director may require the installation and maintenance of physical barriers around outside serving areas to control liquor service, delineate licensed premises and control the ingress and egress to and from the licensed premises for the purpose of providing for the safety of patrons and preventing underage possession and consumption, the removal of alcohol from the premises, the unauthorized bringing of alcohol onto the premises and the unauthorized consumption of alcohol in a public area or thoroughfare.
B. No licensee shall alter or change the physical arrangement of his licensed premises so as to encompass greater space or the use of different or additional entrances, openings or accommodations than the space, entrance or entrances, openings or accommodations offered to the public at the time of issuance of the licensee's license or a prior written approval of the licensed premises, without first having filed with the director floor plans and diagrams completely disclosing and designating the proposed physical alterations of the licensed premises, including the addition of a drive-through or other physical feature to the licensed premises that allows a customer to purchase spirituous liquor without leaving the customer's vehicle, and shall have secured the written approval by the director. This subsection shall apply to any person to person transfer of the licensed premises. The director may charge a fee for review of floor plans and diagrams submitted by a licensee pursuant to this section.
C. The provisions of this section shall not be construed to prohibit in any way off-sale package sales in on-sale licensed premises, but the permission to open the premises to the public under subsections A and

B shall not be granted if the licensee under the privilege provided for off-sale under an on-sale license proposes to maintain an off-sale operation with ingress and egress directly from the outside of such premises to such off-sale operation other than the ingress and egress provided for the on-sale operation of the licensed premises.
D. The provisions of this section shall apply to all applications, transfers and alterations.

4-208. Rejection as to location
A. The director shall not accept an application nor issue a license to sell or deal in spirituous liquors at a location for which a prior application has been rejected until twelve months after the date of the prior rejection.
B. No application for a license to deal in spirituous liquors shall be filed with nor accepted by the director within five years after the date of the rejection of the last of two previous applications at the same location has been rejected by the board or the director on the basis of lack of public convenience and necessity or denied on appeal pursuant to section 4-211. It shall be incumbent upon the applicant for a license filed after the expiration of the five-year period to establish that there have been significant changes of fact in respect to the location which justify the issuance of a license to deal in spirituous liquor.

4-209. Fees for license, application, issuance, renewal and transfer; late renewal penalty; seasonal operation; surcharges
A. A fee shall accompany an application for an original license or transfer of a license, or in case of renewal, shall be paid in advance. Every license expires annually, except that a license may be renewed for a two-year period pursuant to subsection M of this section if no compliance penalties have been issued to that location during the year before the renewal. A licensee who fails to renew the license on or before the due date shall pay a penalty of one hundred fifty dollars which the licensee shall pay with the renewal fee. A license renewal that is deposited, properly addressed and postage prepaid in an official depository of the United States mail on or before the due date shall be deemed filed and received by the department on the date shown by the postmark or other official mark of the United States postal service stamped on the envelope. If the due date falls on a Saturday, Sunday or other legal holiday, the renewal shall be considered timely if it is received by the department on the next business day. The director may waive a late renewal penalty if good cause is shown by the licensee. A licensee who fails to renew the license on or before the due date may not sell, purchase or otherwise deal in spirituous liquor until the license is renewed. A license that is not renewed within sixty days after the due date is deemed terminated. The director may renew the terminated license if good cause is shown by the licensee. An application fee for an original license or the transfer of a license shall be one hundred dollars, which shall be retained by this state.
B. Issuance fees for original licenses shall be:
1. For an in-state producer's license, to manufacture or produce spirituous liquor in this state, one thousand five hundred dollars.
2. Except as provided in paragraph 15 of this subsection, for an out-of-state producer's, exporter's, importer's or rectifier's license, two hundred dollars.
3. For a microbrewery license, three hundred dollars.
4. For a wholesaler's license, to sell spirituous liquors, one thousand five hundred dollars.
5. For a government license issued in the name of a state agency, state commission, state board, county, city, town, community college or state university or the national guard, one hundred dollars.
6. For a bar license, which is an on-sale retailer's license to sell all spirituous liquors primarily by individual portions and in the original containers, one thousand five hundred dollars.
7. For a beer and wine bar license, which is an on-sale retailer's license to sell beer and wine primarily by individual portions and in the original containers, one thousand five hundred dollars.

8. For a conveyance license issued to an operating railroad company, to sell all spirituous liquors in individual portions or in the original containers on all passenger trains operated by the railroad company, or to an operating airline company, to sell or serve spirituous liquors solely in individual portions on all passenger planes operated by the airline company, or to a boat operating in the waters of this state, to sell all spirituous liquors in individual portions or in the original containers for consumption on the boat, one thousand five hundred dollars.
9. For a liquor store license, which is an off-sale retailer's license to sell all spirituous liquors, one thousand five hundred dollars.
10. For a beer and wine store license, which is an off-sale retailer's license to sell beer and wine, one thousand five hundred dollars.
11. For a hotel-motel license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the hotel or motel, one thousand five hundred dollars.
12. For a restaurant license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the restaurant, one thousand five hundred dollars.
13. For a farm winery license, one hundred dollars. The director may charge a licensed farm winery a fee pursuant to section 4-205.04, subsection D, E or F.
14. For a club license issued in the name of a bona fide club qualified under this title to sell all spirituous liquors on-sale, one thousand dollars.
15. For an out-of-state winery that sells not more than two hundred forty gallons of wine in this state in a calendar year, twenty-five dollars.
16. The department may charge a fee for a craft distiller license.
C. The department may issue licenses with staggered renewal dates to distribute the renewal workload as uniformly as practicable throughout the twelve months of the calendar year. If a license is issued less than six months before the scheduled renewal date of the license, as provided by the department's staggered license renewal system, one-half of the annual license fee shall be charged.
D. The annual fees for licenses shall be:
1. For an in-state producer's license, to manufacture or produce spirituous liquors in this state, three hundred fifty dollars.
2. Except as provided in paragraph 15 of this subsection, for an out-of-state producer's, exporter's, importer's or rectifier's license, fifty dollars.
3. For a microbrewery license, three hundred dollars.
4. For a wholesaler's license, to sell spirituous liquors, two hundred fifty dollars.
5. For a government license issued to a county, city or town, community college or state university or the national guard, one hundred dollars.
6. For a bar license, which is an on-sale retailer's license to sell all spirituous liquors primarily by individual portions and in the original containers, one hundred fifty dollars.
7. For a beer and wine bar license, which is an on-sale retailer's license to sell beer and wine primarily by individual portions and in the original containers, seventy-five dollars.
8. For a conveyance license issued to an operating railroad company, to sell all spirituous liquors in individual portions or in the original containers on all passenger trains operated by the railroad company, or to an operating airline company, to sell or serve spirituous liquors solely in individual portions on all passenger planes operated by the airline company, or to a boat operating in the waters of this state, to sell all spirituous liquor in individual portions or in the original containers for consumption on the boat, two hundred twenty-five dollars.
9. For a liquor store license, which is an off-sale retailer's license to sell all spirituous liquors, fifty dollars.
10. For a beer and wine store license, which is an off-sale retailer's license to sell beer and wine, fifty dollars.
11. For a hotel-motel license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the hotel or motel, five hundred dollars.

12. For a restaurant license issued as such, to sell and serve spirituous liquors solely for consumption on the licensed premises of the restaurant, five hundred dollars, and for a restaurant license that is permitted to continue operating as a restaurant pursuant to section 4-213, subsection E, an additional amount established by the director. The department shall transfer this amount to the state treasurer for deposit in the state general fund.
13. For a farm winery license, one hundred dollars. The director may charge a licensed farm winery an annual fee pursuant to section 4-205.04, subsection D, E or F.
14. For a club license issued in the name of a bona fide club qualified under this title to sell all spirituous liquors on-sale, one hundred fifty dollars.
15. For an out-of-state winery that sells not more than two hundred forty gallons of wine in this state in a calendar year, twenty-five dollars.
16. The director may charge a fee for the annual renewal of a craft distiller license.
E. Where the business of an on-sale retail licensee is seasonal, not extending over periods of more than six months in any calendar year, the licensee may designate the periods of operation, and a license may be granted for those periods only, on payment of one-half of the fee prescribed in subsection D of this section.
F. Transfer fees from person to person for licenses transferred pursuant to section 4-203, subsection C shall be three hundred dollars.
G. Transfer fees from location to location, as provided for in section 4-203, shall be one hundred dollars.
H. Assignment fees for a change of agent, as provided for in section 4-202, subsection C, shall be one hundred dollars, except that where a licensee holds multiple licenses the assignment fee for the first license shall be one hundred dollars and the assignment fee for all remaining licenses transferred to the same agent shall be fifty dollars each, except that the aggregate assignment fees shall in no event exceed one thousand dollars.
I. No fee shall be charged by the department for an assignment of a liquor license in probate or an assignment pursuant to the provisions of a will or pursuant to a judicial decree in a domestic relations proceeding which assigns ownership of a business which includes a spirituous liquor license to one of the parties in the proceeding. In the case of nontransferable licenses no fee shall be charged by the department for the issuance of a license for a licensed business pursuant to a transfer of the business in probate or pursuant to the provisions of a will or pursuant to a judicial decree in a domestic relations proceeding which assigns ownership of the business to one of the parties in the proceeding.
J. The director shall assess a surcharge of thirty dollars on all licenses prescribed in subsection D, paragraphs 6, 7 and 12 of this section. Monies from the surcharge shall be used by the department exclusively for the costs of an auditor and support staff to review compliance by applicants and licensees with the requirements of section 4-205.02, subsection E. The department shall assess the surcharge as part of the annual license renewal fee.
K. The director shall assess a surcharge of thirty-five dollars on all licenses prescribed in this section. Monies from the surcharge shall be used by the department exclusively for the costs of an enforcement program to investigate licensees who have been the subject of multiple complaints to the department. The enforcement program shall respond to complaints against licensees by neighborhood associations, by neighborhood civic groups and from municipal and county governments. The department shall assess the surcharge as part of the annual license renewal fee.
L. The director shall assess a surcharge of twenty dollars on all licenses prescribed in subsection D, paragraphs 11 and 12 of this section and thirty-five dollars on all other licenses prescribed in this section. Monies from the surcharge and from surcharges imposed pursuant to subsection K of this section shall be used by the department exclusively for the costs of a neighborhood association interaction and liquor enforcement management unit. The unit shall respond to complaints from neighborhood associations, neighborhood civic groups and local governing authorities regarding liquor violations. The director shall report the unit's activities to the board at each board meeting or as the board may direct.
M. Licenses may be renewed every two years with payment of license fees that are twice the amount designated in subsection D of this section and other applicable fees. Licensees renewing every two years

must comply with annual reporting requirements. The director may adopt reasonable rules to permit licensees to renew every two years.

4-210. Grounds for revocation, suspension and refusal to renew; notice; complaints; hearings

A. After notice and hearing, the director may suspend, revoke or refuse to renew any license issued pursuant to this chapter for any of the following reasons:

1. There occurs on the licensed premises repeated acts of violence or disorderly conduct.
2. The licensee fails to satisfactorily maintain the capability, qualifications and reliability requirements of an applicant for a license prescribed in section 4-202 or 4-203.
3. The licensee or controlling person knowingly files with the department an application or other document that contains material information that is false or misleading or while under oath knowingly gives testimony in an investigation or other proceeding under this title that is false or misleading.
4. The licensee or controlling person is on the premises habitually intoxicated.
5. The licensed business is delinquent for more than one hundred twenty days in the payment of taxes, penalties or interest in an amount that exceeds two hundred fifty dollars to the state or to any political subdivision of the state.
6. The licensee or controlling person obtains, assigns, transfers or sells a spirituous liquor license without compliance with this title or leases or subleases a license.
7. The licensee fails to keep for two years and make available to the department on reasonable request all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of spirituous liquors and, in the case of a restaurant or hotel-motel licensee, all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of food.
8. The licensee or controlling person is convicted of a felony provided that for a conviction of a corporation to serve as a reason for any action by the director, conduct that constitutes the corporate offense and was the basis for the felony conviction must have been engaged in, authorized, solicited, commanded or recklessly tolerated by the directors of the corporation or by a high managerial agent acting within the scope of employment.
9. The licensee or controlling person violates or fails to comply with this title, any rule adopted pursuant to this title or any liquor law of this state or any other state.
10. The licensee fails to take reasonable steps to protect the safety of a customer of the licensee or any other person entering, leaving or remaining on the licensed premises when the licensee knew or reasonably should have known of the danger to the person, or the licensee fails to take reasonable steps to intervene by notifying law enforcement officials or otherwise to prevent or break up an act of violence or an altercation occurring on the licensed premises or immediately adjacent to the premises when the licensee knew or reasonably should have known of the acts of violence or altercations.
11. The licensee or controlling person lacks good moral character.
12. The licensee or controlling person knowingly associates with a person who has engaged in racketeering, as defined in section 13-2301, or who has been convicted of a felony, and the association is of a nature as to create a reasonable risk that the licensee will fail to conform to the requirements of this title or of any criminal statute of this state.
13. A licensee that is a liquor store as defined in section 46-297 violates the restrictions on use of automatic teller machines or point-of-sale terminals regarding electronic benefit transfer cards prescribed in section 4-242.01.
14. There occurs on the licensed premises a serious act of violence. For the purposes of this paragraph, "serious act of violence" means an incident consisting of a riot, a brawl or a disturbance in which a serious injury causes the death or critical injury of a person and such injuries would be obvious to a reasonable person.
15. The licensee fails to report a serious act of violence that occurs on the licensed premises. For the purposes of this paragraph, "serious act of violence" means an incident consisting of a riot, a brawl or a

disturbance in which a serious injury causes death or critical injury of a person and such injuries would be obvious to a reasonable person.
B. For the purposes of:
1. Subsection A, paragraph 8 of this section, "high managerial agent" means an officer of a corporation or any other agent of the corporation in a position of comparable authority with respect to the formulation of corporate policy.
2. Subsection A, paragraphs 9 and 10 of this section, acts or omissions of an employee of a licensee that violate any provision of this title or rules adopted pursuant to this title shall be deemed to be acts or omissions of the licensee. Acts or omissions by an employee or licensee committed during the time the licensed premises were operated pursuant to an interim permit or without a license may be charged as if they had been committed during the period the premises were duly licensed.
C. The director may suspend, revoke or refuse to issue, transfer or renew a license under this section based solely on the unrelated conduct or fitness of any officer, director, managing agent or other controlling person if the controlling person retains any interest in or control of the licensee after sixty days following written notice to the licensee. If the controlling person holds stock in a corporate licensee or is a partner in a partnership licensee, the controlling person may only divest himself of his interest by transferring the interest to the existing stockholders or partners who must demonstrate to the department that they meet all the requirements for licensure. For the purposes of this subsection, the conduct or fitness of a controlling person is unrelated if it would not be attributable to the licensee.
D. If the director finds, based on clear and convincing evidence in the record, that a violation involves the use by the licensee of a drive-through or walk-up service window or other physical feature of the licensed premises that allows a customer to purchase spirituous liquor without leaving the customer's vehicle or, with respect to a walk-up service window that prevents the licensee from fully observing the customer, and that the use of that drive-through or walk-up service window or other physical feature caused the violation, the director may suspend or terminate the licensee's use of the drive-through or walk-up service window or other physical feature for the sale of spirituous liquor, in addition to any other sanction.
E. The director may refuse to transfer any license or issue a new license at the same location if the director has filed a complaint against the license or location that has not been resolved alleging a violation of any of the grounds set forth in subsection A of this section until the time the complaint has been finally adjudicated.
F. The director shall receive all complaints of alleged violations of this chapter and is responsible for the investigation of all allegations of a violation of, or noncompliance with, this title, any rule adopted pursuant to this title or any condition imposed on the licensee by the license. When the director receives three complaints from any law enforcement agency resulting from three separate incidents at a licensed establishment within a twelve-month period, the director shall transmit a written report to the board setting forth the complaints, the results of any investigation conducted by the law enforcement agency or the department relating to the complaints and a history of all prior complaints against the license and their disposition. The board shall review the report and may direct the director to conduct further investigation of a complaint or to serve a licensee with a complaint and notice of a hearing pursuant to subsection G of this section.
G. On the director's initiation of an investigation or on the receipt of a complaint and an investigation of the complaint as deemed necessary, the director may cause a complaint and notice of a hearing to be directed to the licensee setting forth the violations alleged against the licensee and directing the licensee, within fifteen days after service of the complaint and notice of a hearing, to appear by filing with the director an answer to the complaint. Failure of the licensee to answer may be deemed an admission by the licensee of commission of the act charged in the complaint. The director may then vacate the hearing and impose any sanction provided by this article. The director may waive any sanction for good cause shown including excusable neglect. With respect to any violation of this title or any rule adopted pursuant to this title that is based on the act or omission of a licensee's employee, the director shall consider evidence of mitigation presented by the licensee and established by a preponderance of the evidence that the employee acted intentionally and in violation of the express direction or policy adopted by the licensee

and communicated to the employee and that the employee successfully completed training in a course approved by the director pursuant to section 4-112, subsection G, paragraph 2. The director may set the hearing before himself or an administrative law judge on any of the grounds set forth in subsection A of this section. Instead of issuing a complaint, the director may provide for informal disposition of the matter by consent agreement or may issue a written warning to the licensee. If a warning is issued, the licensee may reply in writing and the director shall keep a record of the warning and the reply.
H. A hearing shall conform to the requirements of title 41, chapter 6, article 10. At the hearing an attorney or corporate officer or employee of a corporation may represent the corporation.
I. The expiration, cancellation, revocation, reversion, surrender, acceptance of surrender or termination in any other manner of a license does not prevent the initiation or completion of a disciplinary proceeding pursuant to this section against the licensee or license. An order issued pursuant to a disciplinary proceeding against a license is enforceable against other licenses or subsequent licenses in which the licensee or controlling person of the license has a controlling interest.
J. The department shall provide the same notice as is provided to the licensee to a lienholder, which has provided a document under section 4-112, subsection B, paragraph 3, of all disciplinary or compliance action with respect to a license issued pursuant to this title. The state shall not be liable for damages for any failure to provide any notice pursuant to this subsection.
K. In any disciplinary action pursuant to this title, a lienholder may participate in the determination of the action. The director shall consider mitigation on behalf of the lienholder if the lienholder proves all of the following by a preponderance of the evidence:
1. That the lienholder's interest is a bona fide security interest. For the purposes of this paragraph, "bona fide security interest" means the lienholder provides actual consideration to the licensee or the licensee's predecessor in interest in exchange for the lienholder's interest. Bona fide security interest includes a lien taken by the seller of a license as security for the seller's receipt of all or part of the purchase price of the license.
2. That a statement of legal or equitable interest was filed with the department before the alleged conduct occurred that is the basis for the action against the license.
3. That the lienholder took reasonable steps to correct the licensee's prior actions, if any, or initiated an action pursuant to available contract rights against the licensee for the forfeiture of the license after being provided with notice by the department of disciplinary action as provided in subsection J of this section.
4. That the lienholder was free of responsibility for the conduct that is the basis for the proposed revocation.
5. That the lienholder reasonably attempted to remain informed by the licensee about the business' conduct.
L. If the director decides not to revoke the license based on the circumstances provided in subsection K of this section, the director may issue an order requiring either, or both, of the following:
1. The forfeiture of all interest of the licensee in the license.
2. The lienholder to pay any civil monetary penalty imposed on the licensee.
M. If any on-sale licensee proposes to provide large capacity entertainment events or sporting events with an attendance capacity exceeding a limit established by the director, the director may request a security plan from the licensee that may include trained security officers, lighting and other requirements. This subsection exclusively prescribes the security requirements for a licensee and does not create any civil liability for the state, its agencies, agents or employees or a person licensed under this title or agents or employees of a licensee.

4-210.01. Authority to impose civil penalty; training
A. In lieu of or in addition to the suspension or revocation of or refusal to renew a license authorized by section 4-210, subsection A, the director may impose a civil penalty of not less than two hundred nor more than three thousand dollars for each violation. The licensee is entitled to appeal the decision of the

director to the board. The board may affirm, modify or reverse the finding and decision of the director and may decrease the civil penalty imposed by the director.
B. The director may establish payment of the civil penalty as authorized in subsection A of this section, by the licensee in the form of a single payment or installment payments.
C. In addition to the imposition of any other penalty authorized by this title, the director may impose a requirement that the licensee or other person attend a training program approved by the department.

4-210.02. Appeals from director
A. Except as provided in section 4-203.01, subsection E, a decision issued by the director is not final for purposes of appeal to superior court until it has first been appealed to and ruled on by the board. Any aggrieved party may appeal any final decision of the director regarding applicants or licensees to the board based on a contention that the decision was any of the following:
1. Founded on or contained errors of law which shall specifically include errors of construction or application of any relevant rules.
2. Unsupported by any competent evidence as disclosed by the entire record.
3. Materially affected by unlawful procedures.
4. Based on a violation of any constitutional provision.
5. Arbitrary or capricious.
B. The aggrieved party shall file the appeal in writing with the department within fifteen days after service of the notice of the decision of the director. The decision of the director is suspended until the determination of any appeal by the board.
C. The board or an administrative law judge shall conduct a hearing on the appeal pursuant to title 41, chapter 6, article 10 and may accept any relevant and material evidence and testimony and exercise the rights prescribed by section 12-2212 or section 4-112, subsection F. At the hearing an attorney or corporate officer or employee of a corporation may represent the corporation. The department shall prepare an official record of the hearing, including all testimony recorded mechanically or stenographically and all exhibits introduced. The department is not required to transcribe such record except pursuant to an appeal to the superior court, except that, upon written request and receipt of a reasonable fee for transcribing such record, the department may transcribe the record or allow for its transcription by the person requesting.
D. The board may affirm, reverse or modify any decision issued by the director.

4-211. Judicial review; bond
A. 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.
B. In the case of any judicial review of a decision of the department, the director may require the posting of a bond with the court to reimburse the department for reasonable costs in transcribing and preparing the record of the department. The bond is payable to the department if the court awards costs to the department pursuant to section 12-912.

4-212. Injunctions
If the board or the director has reasonable grounds to believe that a person is violating section 4-244.05 or 4-250.01 or is manufacturing, selling or dealing in spirituous liquor without a valid license, permit or registration in violation of this title, the board or the director may apply to the superior court for a temporary restraining order and other injunctive relief prohibiting the specific acts complained of by the board or the director.

4-213. Restaurant audit

A. The director may require a restaurant to submit an audit of its records to demonstrate compliance with section 4-205.02. The director shall not require an establishment to submit to such an audit more than once a year after the initial twelve months of operation even if the establishment is allowed to continue operating as a restaurant pursuant to subsection E of this section.

B. Except as provided in subsection D of this section, the department shall audit accounts, records and operations of a licensee that cover a twelve month period. When conducting an audit, the department shall use generally accepted auditing standards. An establishment that averages at least forty per cent of its gross revenue from the sale of food during the twelve month audit period shall be deemed to comply with the gross revenue requirements of section 4-205.02. The twelve month audit period shall fall within the sixteen months immediately preceding the beginning of the audit.

C. If the audit or a consent agreement that may be offered at the discretion of the director and that is signed by the licensee and the director reveals that the licensee did not meet the definition of a restaurant as prescribed in section 4-205.02 and the percentage of food sales determined by the audit or consent agreement was:

1. Less than thirty per cent, notwithstanding section 4-209, subsection A, the director shall deem the license to have been surrendered or may revoke the license as provided in section 4-205.02, subsection D.

2. At least thirty per cent but less than thirty-seven per cent, the department shall allow the licensee a six month period to continue to operate under the restaurant license, during which the licensee shall either:

(a) Replace the license with a bar or beer and wine bar license, except that, at the end of that six month period, the department shall revoke the restaurant license or the licensee shall surrender the restaurant license.

(b) Obtain permission from the department to continue operating with a restaurant license pursuant to subsection E of this section.

3. At least thirty-seven per cent but less than forty per cent, the licensee shall be granted a period of one year to continue to operate under the restaurant license, during which the licensee shall attempt to increase the food percentage to at least forty per cent. If the licensee does not increase the percentage of food sales to at least forty per cent, the department shall allow the licensee a six month period to continue to operate under the restaurant license, during which the licensee shall either:

(a) Replace the license with a bar or beer and wine bar license, except that, at the end of the six month period, the department shall revoke the restaurant license or the licensee shall surrender the restaurant license.

(b) Obtain permission from the department to continue operating with a restaurant license pursuant to subsection E of this section.

D. The department may conduct an audit of a licensee described in section 4-209, subsection B, paragraph 12 after twelve months following the beginning of operations as a restaurant by the licensee to determine compliance by the licensee with section 4-205.02, except that the department may conduct an audit of a licensee within the first twelve months of operation if the licensee has made a substantial modification in the restaurant equipment, service or entertainment items or seating capacity during that twelve month period, in which event the department may conduct the audit for a period of less than twelve months.

E. A restaurant licensee may continue to operate with its restaurant license if its food sales are at least thirty per cent and less than forty per cent and the department approves the continuation of the restaurant license pursuant to this subsection and subsections C, F, G, H and I of this section. The department shall not approve more than fifteen restaurant licenses pursuant to this subsection and subsections C, F, G, H and I of this section in any fiscal year. The department shall not approve any additional licenses pursuant to this subsection and subsections C, F, G, H and I of this section from consent agreements entered into or audits conducted in any fiscal year after 2012-2013. The department may approve a request submitted by the licensee to continue to operate with its restaurant license only if all of the following apply at the time the licensee files its request with the department:

1. The restaurant has a sufficient number of cooks, food preparation personnel and wait staff to prepare and provide the restaurant services that are necessary for the menu offered by the licensee.

2. The restaurant's equipment is of a sufficient grade and the size of the restaurant's kitchen is appropriate to the menu offered and the kitchen occupies not less than twenty per cent of the total floor space of the licensed premises.
3. The menu is of a type consistent with a restaurant operation. In making a determination pursuant to this paragraph, the department may consider the proportion of food sales to alcohol sales, the price of spirituous liquor beverages and food served by the licensee and whether the licensee provides reduced price or complimentary food and beverages.
4. Not more than thirty per cent of the public interior area floor space consists of pool tables, dart or arcade games, barstools, cocktail tables and similar types of seating and dance floors, and the aggregate area of all dance floors on the premises is not greater than ten per cent of the total floor space of the public area of the premises.
5. The name of the restaurant does not include terms associated with alcohol consumption, such as "bar", "tavern", "pub", "spirits", "club", "lounge", "cabaret", "cantina" or "saloon".
6. Disposable dinnerware and smallware, including dining utensils, are not used except in outdoor areas.
F. If the department intends to approve a restaurant's continuation of operation pursuant to subsection E of this section:
1. The department shall advise the governing body of the city or town if the premises are within the incorporated limits of a city or town or the county of the department's intent.
2. The city or town or the county shall post a notice for at least twenty days on the licensed premises that the licensee has made a request for continuation to operate with a restaurant license and invite bona fide residents who own, lease or reside on property within a one mile radius of the licensed premises to file written comments with the department regarding the request within thirty days of the first posting of the notice.
G. If the local jurisdiction through its governing body or its authorized agent does not object within ninety days, the licensee may continue its operation as a restaurant.
H. If the department intends to disapprove a restaurant's continuation of operation pursuant to subsection E of this section, or if the local jurisdiction or its agent timely objects to its continuation, the department shall set a hearing before the board and the local jurisdiction shall post a notice of the hearing for a period of at least twenty days on the licensed premises. The city or town or the county may testify at the hearing and bona fide residents who own, lease or reside on property within a one mile radius of the licensed premises may testify before the board regarding the licensee's request. The board shall determine whether the restaurant may continue its operation based on consideration of the criteria listed in subsection E of this section.
I. A restaurant licensee may continue to operate with its restaurant license pursuant to subsection E of this section if the restaurant and the restaurant licensee continue to meet the requirements of this subsection, subsection E of this section and any other statute. As a condition of continuing operation as a restaurant under subsection E of this section, the department may require the licensee to specifically acknowledge the representations made by the licensee regarding its operations in support of the licensee's continuing operation as a restaurant. Notwithstanding subsection A of this section, if the licensee changes its operation in any way that materially and detrimentally affects the representations made by the licensee, the department may audit the licensee or terminate the license without an audit.
J. Notwithstanding section 4-209, subsection D, paragraph 12, the state treasurer shall deposit five per cent of the annual fee for a restaurant that is permitted to continue operating as a restaurant pursuant to subsection E of this section in the driving under the influence abatement fund established by section 28-1304.

4-214. Arizona wines; labeling

A. A person licensed as a farm winery pursuant to section 4-205.04 or licensed as a producer pursuant to section 4-203 may label a wine offered for sale that states that the wine is any of the following:

1. An Arizona wine or a wine from a particular county in this state, if at least seventy-five percent of the wine by volume is produced or manufactured from grapes or other fruit grown in this state and is fermented, processed, bottled and labeled in this state.
2. A wine from a particular federally recognized viticultural area, if at least eighty-five percent of the wine by volume is produced or manufactured from grapes or other fruit grown in this state and is fermented, processed, bottled and labeled in this state.
3. A wine from a particular vineyard, orchard, farm or ranch, if at least ninety-five percent of the wine by volume is produced or manufactured from grapes or other fruit grown in this state and is fermented, processed, bottled and labeled in this state.
4. Estate bottled, if one hundred percent of the wine by volume is produced or manufactured from a winery in a particular federally recognized viticultural area in which all grapes or other fruit were grown, crushed, fermented, processed, aged and bottled in a continuous process, the wine at no time having left the premises of the bottling winery.
B. A licensee that complies with subsection A of this section is not subject to criminal, civil or administrative action for a violation of section 4-244, paragraph 39.

4-221. Registration of stills; forfeiture; sale; proceeds
A. Every person having in his possession or custody or under his control a still or distilling apparatus shall register it with the director under the rules the director may prescribe, and every still or distilling apparatus not so registered, together with all mash, wort or wash, for distillation or for the production of spirits or alcohol, and all finished products, together with all personal property in the possession or custody of, or under the control of any person, which may be used in the manufacture or transportation of spirituous liquors, and which is found in the building or in any yard or enclosure connected with the building in which the unregistered still or distilling apparatus is located, shall be forfeited to the state.
B. The still, distilling apparatus, mash, wort, wash or finished products shall forthwith be destroyed by any peace officer, and all personal property forfeited to the state shall be sold at public auction to the highest bidder for cash on five days' notice.
C. The notice shall be posted at the courthouse in the county in which the personal property was seized or at the office of the director and shall be published in a newspaper of general circulation published in this state which is nearest to the place where the personal property was seized. After paying the expenses of the publication and the expenses of sale from the proceeds of the sale, any balance shall be paid into the general fund of the state.

4-222. Registration of retail agents; fees
A. Every person who holds a bar, beer and wine bar, liquor store, beer and wine store, club, hotel-motel or restaurant license and who is authorized by other similarly licensed retailers to act as their retail agent shall register with the director. Such registration shall be in accordance with the rules adopted by the director pursuant to section 4-112 and shall also include a listing of the names and business addresses of those similarly licensed retailers who have authorized him to act as their retail agent. While possessing a certificate of registration, a retail agent shall be entitled to purchase and shall accept delivery of spirituous liquors for which he is licensed for and on behalf of himself and those similarly licensed retailers who have authorized him to act as their retail agent with the delivery to be made at the retail agent's licensed premises or other location authorized by the department. On the termination of such authorization by any retailer, the retail agent shall promptly notify the director. Nothing in this section shall require a wholesaler to sell malt beverages to a registered retail agent for distribution to other retailers.
B. A fee of five dollars shall be collected for each registered retailer in this state, and a fee of fifty dollars for each registered agent for a distillery, winery, brewery, importer or broker having its place of manufacture or business outside of the state.

C. The director shall issue a certificate of registration to each person so registered as provided in this section, and may, for good cause shown, cancel any certificate of registration so issued.

4-223. Authority of cities and towns to tax transactions involving spirituous liquors; prohibitions
A. In addition to the taxes provided for in this chapter, incorporated cities and towns shall have the power to levy a tax on the privilege of engaging or continuing in the business of selling spirituous liquor at retail within their corporate limits and to impose a permit tax or fee, but this section shall not apply to wholesalers licensed under section 4-209.
B. This section shall not be construed to give to incorporated cities and towns power to prohibit the manufacture, sale, distribution, and disposal of intoxicating liquors.

4-224. Local ordinances; prohibitions
A city, town or county shall not adopt ordinances or regulations in conflict with the provisions of this title or any rules adopted pursuant to this title, including, but not limited to, ordinances or regulations pertaining to hours and days of liquor sales and ordinances or regulations that conflict with the definition of restaurant in section 4-205.02. A city, town or county shall not limit any right granted by the license, by this title or by any rules adopted pursuant to this title. A city, town or county may enforce lawful zoning requirements. Zoning shall not be a basis for protesting or denying a license under this title.

4-226. Exemptions
The provisions of this title do not apply to:
1. Drugstores selling spirituous liquors only on prescription.
2. Any confectionery candy containing less than five per cent by weight of alcohol.
3. Ethyl alcohol intended for use or used for the following purposes:
(a) Scientific, chemical, mechanical, industrial and medicinal purposes. For the purposes of this paragraph, medicinal purposes does not include ethyl alcohol or spirituous liquor that contains marijuana or usable marijuana as defined in section 36-2801.
(b) Use by those authorized to procure spirituous liquor or ethyl alcohol tax-free, as provided by the acts of Congress and regulations promulgated thereunder.
(c) In the manufacture of denatured alcohol produced and used as provided by the acts of Congress and regulations promulgated thereunder.
(d) In the manufacture of patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical and industrial preparations or products, unfit and not used for beverage purposes.
(e) In the manufacture of flavoring extracts and syrups unfit for beverage purposes.
4. The purchase, storage, distribution, service or consumption of wine in connection with the bona fide practice of a religious belief or as an integral part of a religious exercise by a church recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code and in a manner not dangerous to public health or safety. This exemption does not apply to any alleged violation of section 4-244, paragraph 9, 34, 35 or 41.
5. Beer produced for personal or family use that is not for sale. The beer may be removed from the premises where it was made and exhibited at organized affairs, exhibitions or competitions such as homebrewers' contests, tasting or judging.

4-227. Qualified retail cooperatives; pricing; definitions
A. A wholesaler shall sell its product to a qualified retail cooperative at prices established by the quantity of spirituous liquor being purchased.

B. As used in this section:
1. "Product" means a particular brand of spirituous liquor in a designated size container or a mix of brands and containers when sold on a combined basis established by the wholesaler that is offered on quantity discount terms established by the wholesaler.
2. "Qualified retail cooperative" means a retail cooperative of two retail licensees.

4-227.01. Channel pricing; definition
A. The wholesaler may employ channel pricing to sell its product to on-sale licensees at a different price than the wholesaler sells its product to off-sale licensees. All channel pricing discounts must be:
1. Based on the volume of the product delivered within a twenty-four hour period.
2. Made equally available to each retailer in that retailer's channel.
B. For the purposes of this section, "product" means a particular brand of spirituous liquor in a designated size container or a mix of brands and containers when sold on a combined basis as established by the wholesaler that is offered in quantity discount terms established by the wholesaler.

4-228. Front entrance lock prohibited; exception
A. Except as provided in this section, an on-sale licensee shall not lock or permit to be locked the front entrance to a licensed establishment until all persons other than the licensee or the licensee's employees on duty have left the premises. This section does not prohibit locking the premises immediately after the closing of the premises if an employee and one other person remain on the premises.
B. If the holder of a club license issued pursuant to section 4-205 has bona fide concerns regarding the safety of club members and their guests, the licensee may apply to the director for permission to lock the front entrance to the licensed establishment. The application shall be on a form prescribed by the director and shall include a description of the safety concerns.
C. The director shall determine in the director's discretion whether to grant permission to lock the front entrance to a club license. The director shall consider, among other factors, the safety concerns documented by the club licensee and the location, method of operation and regulatory history of the club. Fire fighters, law enforcement officers, emergency medical personnel and the director shall have immediate access by means of a master key, master card or other similar device to the licensed establishment at all times that the establishment is occupied. At any time the director may revoke permission to lock the front entrance granted pursuant to this section.

4-229. Licenses; handguns; posting of notice
A. A person may carry a concealed handgun on the premises of a licensee who is an on-sale retailer unless the licensee posts a sign that clearly prohibits the possession of weapons on the licensed premises. The sign shall conform to the following requirements:
1. Be posted in a conspicuous location accessible to the general public and immediately adjacent to the liquor license posted on the licensed premises.
2. Contain a pictogram that shows a firearm within a red circle and a diagonal red line across the firearm.
3. Contain the words, "no firearms allowed pursuant to A.R.S. section 4-229".
B. A person shall not carry a firearm on the licensed premises of an on-sale retailer if the licensee has posted the notice prescribed in subsection A of this section.
C. It is an affirmative defense to a violation of subsection B of this section if:
1. The person was not informed of the notice prescribed in subsection A of this section before the violation.
2. Any one or more of the following apply:
(a) At the time of the violation the notice prescribed in subsection A of this section had fallen down.
(b) At the time of the violation the person was not a resident of this state.

(c) The licensee had posted the notice prescribed in subsection A of this section not more than thirty days before the violation.
D. The department of liquor licenses and control shall prepare the signs required by this section and make them available at no cost to licensees.
E. The signs required by this section shall be composed of block, capital letters printed in black on white laminated paper at a minimum weight of one hundred ten pound index. The lettering and pictogram shall consume a space at least six inches by nine inches. The letters constituting the words "no firearms allowed" shall be at least three-fourths of a vertical inch and all other letters shall be at least one-half of a vertical inch. Nothing shall prohibit a licensee from posting additional signs at one or more locations on the premises.
F. This section does not prohibit a person who possesses a handgun from entering the licensed premises for a limited time for the specific purpose of either:
1. Seeking emergency aid.
2. Determining whether a sign has been posted pursuant to subsection A of this section.

4-241. Selling or giving liquor to underage person; illegally obtaining liquor by underage person; violation; classification; definitions
A. If a licensee, an employee of the licensee or any other person questions or has reason to question that the person ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving or delivery of spirituous liquor or entering a portion of a licensed premises when the primary use is the sale or service of spirituous liquor is under the legal drinking age, the licensee, employee of the licensee or other person shall do all of the following:
1. Demand identification from the person.
2. Examine the identification to determine that the identification reasonably appears to be a valid, unaltered identification that has not been defaced.
3. Examine the photograph in the identification and determine that the person reasonably appears to be the same person in the identification.
4. Determine that the date of birth in the identification indicates the person is not under the legal drinking age.
B. A licensee or an employee of the licensee who follows the procedures prescribed in subsection A of this section and who records and retains a record of the person's identification on this particular visit is not in violation of subsection J of this section or section 4-244, paragraph 9 or 22. This defense applies to actions of the licensee and all employees of the licensee after the procedure has been employed during the particular visit to the licensed premises by the person. A licensee or an employee of the licensee is not required to demand and examine identification of a person pursuant to subsection A of this section if, during this visit to the licensed premises by the person, the licensee or any employee of the licensee has previously followed the procedure prescribed in subsection A of this section.
C. Proof that the licensee or employee followed the entire procedure prescribed in subsection A of this section but did not record and retain a record as prescribed in subsection B of this section is an affirmative defense to a criminal charge under subsection J of this section or under section 4-244, paragraph 9 or 22 or a disciplinary action under section 4-210 for a violation of subsection J of this section or section 4-244, paragraph 9 or 22. This defense applies to actions of the licensee and all employees of the licensee after the procedure has been employed during the particular visit to the licensed premises by the person.
D. A licensee or an employee who has not recorded and retained a record of the identification prescribed by subsection B of this section is presumed not to have followed any of the elements prescribed in subsection A of this section.
E. For the purposes of section 4-244, paragraph 22, a licensee or an employee who has not recorded and retained a record of the identification prescribed by subsection B of this section is presumed to know that the person entering or attempting to enter a portion of a licensed premises when the primary use is the sale or service of spirituous liquor is under the legal drinking age.

F. It is a defense to a violation of subsection A of this section if the person ordering, purchasing, attempting to purchase or otherwise procuring or attempting to procure the serving or delivery of spirituous liquor or to enter a portion of a licensed premises when the primary use is the sale or service of spirituous liquor is not under the legal drinking age.
G. A person penalized for a violation of subsection J of this section or section 4-244, paragraph 22 shall not be additionally penalized for a violation of subsection A of this section relating to the same event.
H. The defenses provided in this section do not apply to a licensee or an employee who has actual knowledge that the person exhibiting the identification is under the legal drinking age.
I. Any of the following types of records are acceptable forms for recording the person's identification:
1. A writing containing the type of identification, the date of issuance of the identification, the name on the identification, the date of birth on the identification and the signature of the person.
2. An electronic file or printed document produced by a device that reads the person's age from the identification.
3. A dated and signed photocopy of the identification.
4. A photograph of the identification.
5. A digital copy of the identification.
J. An off-sale retail licensee or employee of an off-sale retail licensee shall require an instrument of identification from any customer who appears to be under twenty-seven years of age and who is using a drive-through or other physical feature of the licensed premises that allows a customer to purchase spirituous liquor without leaving the customer's vehicle.
K. The following written instruments are the only acceptable types of identification:
1. An unexpired driver license issued by any state, the District of Columbia, any territory of the United States or Canada if the license includes a picture of the licensee and the person's date of birth. A driver license issued to a person who is under twenty-one years of age is no longer an acceptable type of identification under this paragraph thirty days after the person turns twenty-one years of age.
2. An unexpired nonoperating identification license issued pursuant to section 28-3165 or an equivalent form of identification license issued by any state, the District of Columbia, any territory of the United States or Canada if the license includes a picture of the person and the person's date of birth. An unexpired nonoperating license issued to a person who is under twenty-one years of age is no longer an acceptable type of identification under this paragraph thirty days after the person turns twenty-one years of age.
3. An unexpired armed forces identification card that includes the person's picture and date of birth.
4. A valid unexpired passport or a valid unexpired resident alien card that contains a photograph of the person and the person's date of birth.
L. A person who is under the legal drinking age and who misrepresents the person's age to any person by means of a written instrument of identification with the intent to induce a person to sell, serve, give or furnish spirituous liquor contrary to law is guilty of a class 1 misdemeanor.
M. A person who is under the legal drinking age and who solicits another person to purchase, sell, give, serve or furnish spirituous liquor contrary to law is guilty of a class 3 misdemeanor.
N. A person who is under the legal drinking age and who uses a fraudulent or false written instrument of identification or identification of another person or uses a valid license or identification of another person to gain access to a licensed establishment is guilty of a class 1 misdemeanor.
O. A person who uses a driver or nonoperating identification license in violation of subsection L or N of this section is subject to suspension of the driver or nonoperating identification license as provided in section 28-3309. A person who does not have a valid driver or nonoperating identification license and who uses a driver or nonoperating identification license of another in violation of subsection C or E of this section has the person's right to apply for a driver or nonoperating identification license suspended as provided by section 28-3309.
P. A person who knowingly influences the sale, giving or serving of spirituous liquor to a person under the legal drinking age by misrepresenting the age of such person or who orders, requests, receives or procures spirituous liquor from any licensee, employee or other person with the intent of selling, giving or

serving it to a person under the legal drinking age is guilty of a class 1 misdemeanor. A licensee or employee of a licensee who has actual knowledge that a person is under the legal drinking age and who admits the person into any portion of the licensed premises in violation of section 4-244, paragraph 22 is in violation of this subsection. In addition to other penalties provided by law, a judge may suspend a driver license issued to or the driving privilege of a person for not more than thirty days for a first conviction and not more than six months for a second or subsequent conviction under this subsection.
Q. A person who is of legal drinking age and who is an occupant of unlicensed premises is guilty of a class 1 misdemeanor if both of the following apply:
1. The person knowingly allows a gathering on such unlicensed premises of two or more persons who are under the legal drinking age and who are neither:
(a) Members of the immediate family of such person.
(b) Permanently residing with the person.
2. The person knows or should know that one or more of the persons under the legal drinking age is in possession of or consuming spirituous liquor on the unlicensed premises.
R. For the purposes of subsection Q of this section, "occupant" means a person who has legal possession or the legal right to exclude others from the unlicensed premises.
S. A peace officer shall forward or electronically transfer to the director of the department of transportation the affidavit required by section 28-3310 if the peace officer has arrested a person for the commission of an offense for which, on conviction, suspension of the license or privilege to operate a motor vehicle is required by section 28-3309, subsection A, B or D, or if the peace officer has confiscated a false identification document used by the person to gain access to licensed premises.
T. A person who acts under a program of testing compliance with this title that is approved by the director is not in violation of section 4-244.
U. Law enforcement agencies may use persons who are under the legal drinking age to test compliance with this section and section 4-244, paragraph 9 by a licensee if the law enforcement agency has reasonable suspicion that the licensee is violating this section or section 4-244, paragraph 9. A person who is under the legal drinking age and who purchases or attempts to purchase spirituous liquor under the direction of a law enforcement agency pursuant to this subsection is immune from prosecution for that purchase or attempted purchase. Law enforcement agencies may use a person under the legal drinking age pursuant to this subsection only if:
1. The person is at least fifteen but not more than nineteen years of age.
2. The person is not employed on an incentive or quota basis.
3. The person's appearance is that of a person who is under the legal drinking age.
4. A photograph of the person is taken no more than twelve hours before the purchase or attempted purchase. The photograph shall accurately depict the person's appearance and attire. A licensee or an employee of a licensee who is cited for selling spirituous liquor to a person under the legal drinking age pursuant to this subsection shall be permitted to inspect the photograph immediately after the citation is issued. The person's appearance at any trial or administrative hearing that results from a citation shall not be substantially different from the person's appearance at the time the citation was issued.
5. The person places, receives and pays for the person's order of spirituous liquor. An adult shall not accompany the person onto the premises of the licensee.
6. The person does not consume any spirituous liquor.
V. The department may adopt rules to carry out the purposes of this section.

4-242. Sale of liquor on credit prohibited; exceptions

A. It is unlawful for a retail licensee, or an employee or agent of a licensee, to sell or offer to sell, directly or indirectly, or to sanction the sale on credit of spirituous liquor to a retailer's customer, or to give, lend or advance money or anything of value to a retail customer for the purpose of purchasing or bartering for spirituous liquor, except that sales of spirituous liquor consumed on the retail licensed premises may be included on bills rendered to registered guests in hotels and motels, and spirituous liquor sales for on or

off premises consumption may be made with credit cards approved by the director, and sales of spirituous liquor consumed on the premises of private clubs may be included on bills rendered to bona fide members.
B. Any wholesaler or producer may engage in credit transactions with any other wholesaler or producer.

4-242.01. Prohibition of automatic teller machine or point-of-sale terminal that accepts electronic benefit transfer cards on premises
A. It is unlawful for a liquor store as defined in section 46-297 to operate on the licensed premises an automatic teller machine or a point-of-sale terminal that accepts electronic benefit transfer cards issued pursuant to title 46, chapter 2, article 5 or that processes electronic benefit card transactions.
B. On or before February 1, 2014, a licensee that is a liquor store as defined in section 46-297 shall disable the ability of every automatic teller machine and point-of-sale terminal operated on the premises to accept the electronic benefit transfer card or process an electronic benefit transfer transaction.
C. The board shall ensure compliance with the requirements of this section and enforce the continued prohibition on the use of electronic benefit transfer cards.

4-243. Commercial coercion or bribery unlawful; exceptions
A. It is unlawful for a person engaged in the business of distiller, vintner, brewer, rectifier or blender or any other producer or wholesaler of any spirituous liquor, directly or indirectly, or through an affiliate:
1. To require that a retailer purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons.
2. To induce a retailer by any form of commercial bribery to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of spirituous liquor sold or offered for sale by other persons.
3. To acquire an interest in property owned, occupied or used by the retailer in the retailer's business, or in a license with respect to the premises of the retailer.
4. To furnish, give, rent, lend or sell to the retailer equipment, fixtures, signs, supplies, money, services or other things of value, subject to such exception as the rules adopted pursuant to this title may prescribe, having regard for established trade customs and the purposes of this subsection.
5. To pay or credit the retailer for advertising, display or distribution service, except that the director may adopt rules regarding advertising in conjunction with seasonal sporting events.
6. To guarantee a loan or repayment of a financial obligation of the retailer.
7. To extend credit to the retailer on a sale of spirituous liquor.
8. To require the retailer to take and dispose of a certain quota of spirituous liquor.
9. To offer or give a bonus, a premium or compensation to the retailer or any of the retailer's officers, employees or representatives.
B. This section does not prohibit any distiller, vintner, brewer, rectifier, blender or other producer or wholesaler of any spirituous liquor from:
1. Giving financial and other forms of event sponsorship assistance to nonprofit or charitable organizations for purposes of charitable fund-raising that are issued special event licenses by the department. This section does not prohibit suppliers from advertising their sponsorship at such special events.
2. Providing samples to retail consumers at on-sale premises establishments according to the following procedures:
(a) Sampling operations shall be conducted under the supervision of an employee of the sponsoring producer or wholesaler.
(b) Sampling shall be limited to twelve ounces of beer or cooler products, six ounces of wine or two ounces of distilled spirits per person per brand.

(c) If requesting the on-sale retailer to prepare a drink for the consumer, the producer's or wholesaler's representative shall pay the retailer for the sample drink.
(d) The producer or wholesaler may not buy the on-sale retailer or the retailer's employees a drink during their working hours or while they are engaged in waiting on or serving customers.
(e) The producer or wholesaler may not give a keg of beer or any spirituous liquor or any other gifts or benefits to the on-sale retailer.
(f) All sampling procedures shall comply with federal sampling laws and regulations.
3. Providing samples to retail consumers on an off-sale retailer's premises according to the following procedures:
(a) Sampling shall be conducted by an employee of the sponsoring producer or wholesaler.
(b) The producer or wholesaler shall notify the department in writing or by electronic means not less than ten days before the sampling of the date, time and location of the sampling and of the name of the wholesaler or producer distributing the product.
(c) Sampling shall be limited to three ounces of beer, one and one-half ounces of wine or one ounce of distilled spirits per person per day for consumption on the premises and up to seventy-two ounces of beer and two ounces of distilled spirits per person per day for consumption off the premises.
(d) An off-sale retailer shall not permit sampling to be conducted on a licensed premises on more than twelve days in any calendar year per wholesaler or producer.
(e) Sampling shall be limited to one wholesaler or producer at any one off-sale retailer's premises on any day and shall not exceed three hours on any day.
(f) A producer conducting sampling shall buy the sampled product from a wholesaler.
(g) The producer or wholesaler shall not provide samples to any person who is under the legal drinking age.
(h) The producer or wholesaler shall designate an area in which sampling is conducted that is in the portion of the licensed premises where spirituous liquor is primarily displayed and separated from the remainder of the off-sale retailer's premises by a wall, rope, door, cable, cord, chain, fence or other barrier. The producer or wholesaler shall not permit persons under the legal drinking age from entering the area in which sampling is conducted.
(i) The producer or wholesaler may not provide samples to the retailer or the retailer's employees.
(j) Sampling shall not be conducted in retail premises with a total of under five thousand square feet of retail space unless at least seventy-five per cent of the retailer's shelf space is dedicated to the sale of spirituous liquor.
(k) The producer or wholesaler may not give spirituous liquor or any other gifts or benefits to the off-sale retailer.
(l) All sampling procedures shall comply with federal sampling laws and regulations.
C. Notwithstanding subsection A, paragraph 4 of this section, any wholesaler of any spirituous liquor may sell tobacco products or foodstuffs to a retailer at a price not less than the cost to the wholesaler.
D. Notwithstanding subsection A, paragraph 4, and subsection B, paragraph 2, subdivision (e) of this section, any wholesaler may furnish without cost promotional items to an on-sale retailer, except that the total market value of the promotional items furnished by that wholesaler to that retailer in any calendar year shall not exceed five hundred dollars. For the purposes of this subsection, "promotional items" means items of equipment, supplies, novelties or other advertising specialties that conspicuously display the brand name of a spirituous liquor product. Promotional items do not include signs.
E. It is unlawful for a retailer to request or knowingly receive anything of value that a distiller, vintner, brewer, rectifier or blender or any other producer or wholesaler is prohibited by subsection A or D of this section from furnishing to a retailer, except that this subsection shall not prohibit special discounts provided to retailers and based on quantity purchases.

4-243.01. Purchasing from other than primary source of supply unlawful; definitions
A. It is unlawful:

1. For any supplier to solicit, accept or fill any order for any spirituous liquor from any wholesaler in this state unless the supplier is the primary source of supply for the brand of spirituous liquor sold or sought to be sold and is duly licensed by the board.
2. For any wholesaler or any other licensee in this state to order, purchase or receive any spirituous liquor from any supplier unless the supplier is the primary source of supply for the brand ordered, purchased or received.
3. Except as provided by section 4-243.02 for a retailer to order, purchase or receive any spirituous liquor from any source other than any of the following:
(a) A wholesaler that has purchased the brand from the primary source of supply.
(b) A wholesaler that is the designated representative of the primary source of supply in this state and that has purchased such spirituous liquor from the designated representative of the primary source of supply within or without this state.
(c) A registered retail agent pursuant to section 4-101.
(d) A farm winery licensed under section 4-205.04 and subject to the limitations prescribed in section 4-205.04, subsection C, paragraph 7.
(e) A licensed microbrewery licensed under section 4-205.08.
B. All spirituous liquor shipped into this state shall be invoiced to the wholesaler by the primary source of supply. All spirituous liquor shall be unloaded and remain at the wholesaler's premises for at least twenty-four hours. A copy of each invoice shall be transmitted by the wholesaler and the primary source of supply to the department of revenue.
C. The director may suspend for a period of one year the license of any wholesaler or retailer who violates this section.
D. Upon determination by the department of revenue that a primary source of supply has violated this section, no wholesaler may accept any shipment of spirituous liquor from such primary source of supply for a period of one year.
E. For the purposes of this section:
1. "Primary source of supply" means the distiller, producer, owner of the commodity at the time it becomes a marketable product, bottler or exclusive agent of any such distributor or owner. In the case of imported products, the primary source of supply means either the foreign producer, owner, bottler or agent or the prime importer from, or the exclusive agent in, the United States of the foreign distiller, producer, bottler or owner.
2. "Wholesaler" means any person, firm or corporation that is licensed in this state to sell to retailers and that is engaged in the business of warehousing and distributing brands of various suppliers to retailers generally in the marketing area in which the wholesaler is located.

4-243.02. Sale of beer, wine or distilled spirits by producer; limitations
A. A person who holds a producer's license may sell beer produced by the producer through the producer's own on-sale retail premises if:
1. The producer also holds an on-sale retail license.
2. The retail sale of the beer is on or adjacent to the premises of the producer.
B. A person who holds a producer's license may sell wine or distilled spirits produced by the producer at the producer's licensed premises.

4-243.04. On-sale retail licensees; ownership interests; conditions
A. Notwithstanding section 4-243, a distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor may have a direct or indirect ownership interest or a financial interest in the license, premises or business on an on-sale retail licensee if each of the following conditions are met:
1. The retail licensee purchases all spirituous liquor for sale at the premises from wholesalers that are licensed in this state.

2. The retail licensee does not purchase or sell any brand of spirituous liquor produced by the distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor or by any of its subsidiaries or affiliates.
3. The sale and service of spirituous liquor at the premises is an independent business that is owned, managed and supervised by a person or entity that is not employed by and does not have an ownership interest in the retailer's license, premises or business and is not employed by and does not have an ownership interest in the distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor. The person owning, managing and supervising the sale and service of spirituous liquor on the premises of the on-sale retail licensee shall be properly licensed by the department and shall have entered into a commercial lease or operating or management agreement with the owner or operator of the premises. This paragraph does not prohibit the sale and service of spirituous liquor by employees of the owner or operator of the premises who act under the supervision of the independent licensee. This paragraph does not prevent the payment of rent, rent calculated as a percentage of gross receipts or a percentage of gross receipts from the sale of spirituous liquor to the owner or operator of the premises.
B. Notwithstanding section 4-243, a distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor may directly or indirectly furnish, give, rent, lend or sell to an on-sale retail licensee equipment, fixtures, signs, furnishings, money or other things of value if each of the following conditions are met:
1. The retail licensee purchases all spirituous liquor for sale at the premises from wholesalers that are licensed in this state.
2. The retail licensee does not purchase or sell any brand of spirituous liquor produced by the distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor or by any of its subsidiaries or affiliates.
3. The retail licensee is a franchisee of a person that is affiliated with the distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor and the compensation paid by the retail licensee as a franchise fee or royalty is not based on revenue derived from the sale of spirituous liquor.

4-244. Unlawful acts
It is unlawful:
1. For a person to buy for resale, sell or deal in spirituous liquors in this state without first having procured a license duly issued by the board.
2. For a person to sell or deal in alcohol for beverage purposes without first complying with this title.
3. For a distiller, vintner, brewer or wholesaler knowingly to sell, dispose of or give spirituous liquor to any person other than a licensee except in sampling wares as may be necessary in the ordinary course of business, except in donating spirituous liquor to a nonprofit organization which has obtained a special event license for the purpose of charitable fund raising activities or except in donating spirituous liquor with a cost to the distiller, brewer or wholesaler of up to five hundred dollars in a calendar year to an organization that is exempt from federal income taxes under section 501(c) (3), (4), (6) or (7) of the internal revenue code and not licensed under this title.
4. For a distiller, vintner or brewer to require a wholesaler to offer or grant a discount to a retailer, unless the discount has also been offered and granted to the wholesaler by the distiller, vintner or brewer.
5. For a distiller, vintner or brewer to use a vehicle for trucking or transportation of spirituous liquors unless there is affixed to both sides of the vehicle a sign showing the name and address of the licensee and the type and number of the person's license in letters not less than three and one-half inches in height.
6. For a person to take or solicit orders for spirituous liquors unless the person is a salesman or solicitor of a licensed wholesaler, a salesman or solicitor of a distiller, brewer, vintner, importer or broker or a registered retail agent.
7. For any retail licensee to purchase spirituous liquors from any person other than a solicitor or salesman of a wholesaler licensed in this state.

8. For a retailer to acquire an interest in property owned, occupied or used by a wholesaler in the wholesaler's business, or in a license with respect to the premises of the wholesaler.
9. Except as provided in paragraphs 10 and 11 of this section, for a licensee or other person to sell, furnish, dispose of or give, or cause to be sold, furnished, disposed of or given, to a person under the legal drinking age or for a person under the legal drinking age to buy, receive, have in the person's possession or consume spirituous liquor. This paragraph shall not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least nineteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.
10. For a licensee to employ a person under nineteen years of age to manufacture, sell or dispose of spirituous liquors. This paragraph shall not prohibit the employment by an off-sale retailer of persons who are at least sixteen years of age to check out, if supervised by a person on the premises who is at least nineteen years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor.
11. For an on-sale retailer to employ a person under nineteen years of age in any capacity connected with the handling of spirituous liquors. This paragraph does not prohibit the employment by an on-sale retailer of a person under nineteen years of age who cleans up the tables on the premises for reuse, removes dirty dishes, keeps a ready supply of needed items and helps clean up the premises.
12. For a licensee, when engaged in waiting on or serving customers, to consume spirituous liquor or for a licensee or on-duty employee to be on or about the licensed premises while in an intoxicated or disorderly condition.
13. For an employee of a retail licensee, during that employee's working hours or in connection with such employment, to give to or purchase for any other person, accept a gift of, purchase for himself or consume spirituous liquor, except that:
(a) An employee of a licensee, during that employee's working hours or in connection with the employment, while the employee is not engaged in waiting on or serving customers, may give spirituous liquor to or purchase spirituous liquor for any other person.
(b) An employee of an on-sale retail licensee, during that employee's working hours or in connection with the employment, while the employee is not engaged in waiting on or serving customers, may taste samples of beer or wine not to exceed four ounces per day or distilled spirits not to exceed two ounces per day provided by an employee of a wholesaler or distributor who is present at the time of the sampling.
(c) An employee of an on-sale retail licensee, under the supervision of a manager as part of the employee's training and education, while not engaged in waiting on or serving customers may taste samples of distilled spirits not to exceed two ounces per educational session or beer or wine not to exceed four ounces per educational session, and provided that a licensee shall not have more than two educational sessions in any thirty day period.
(d) An unpaid volunteer who is a bona fide member of a club and who is not engaged in waiting on or serving spirituous liquor to customers may purchase for himself and consume spirituous liquor while participating in a scheduled event at the club. An unpaid participant in a food competition may purchase for himself and consume spirituous liquor while participating in the food competition.
(e) An unpaid volunteer of a special event licensee under section 4-203.02 may purchase and consume spirituous liquor while not engaged in waiting on or serving spirituous liquor to customers at the special event. This subdivision does not apply to an unpaid volunteer whose responsibilities include verification of a person's legal drinking age, security or the operation of any vehicle or heavy machinery.
14. For a licensee or other person to serve, sell or furnish spirituous liquor to a disorderly or obviously intoxicated person, or for a licensee or employee of the licensee to allow or permit a disorderly or obviously intoxicated person to come into or remain on or about the premises, except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for a period of time of not to exceed thirty minutes after the state of obvious intoxication is known or should be

known to the licensee in order that a nonintoxicated person may transport the obviously intoxicated person from the premises. For the purposes of this section, "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.
15. For an on-sale or off-sale retailer or an employee of such retailer to sell, dispose of, deliver or give spirituous liquor to a person between the hours of 2:00 a.m. and 6:00 a.m.
16. For a licensee or employee to knowingly permit any person on or about the licensed premises to give or furnish any spirituous liquor to any person under twenty-one years of age or knowingly permit any person under twenty-one years of age to have in the person's possession spirituous liquor on the licensed premises.
17. For an on-sale retailer or an employee of such retailer to allow a person to consume or possess spirituous liquors on the premises between the hours of 2:30 a.m. and 6:00 a.m.
18. For an on-sale retailer to permit an employee or for an employee to solicit or encourage others, directly or indirectly, to buy the employee drinks or anything of value in the licensed premises during the employee's working hours. No on-sale retailer shall serve employees or allow a patron of the establishment to give spirituous liquor to, purchase liquor for or drink liquor with any employee during the employee's working hours.
19. For an off-sale retailer or employee to sell spirituous liquor except in the original unbroken container, to permit spirituous liquor to be consumed on the premises or to knowingly permit spirituous liquor to be consumed on adjacent property under the licensee's exclusive control.
20. For a person to consume spirituous liquor in a public place, thoroughfare or gathering. The license of a licensee permitting a violation of this paragraph on the premises shall be subject to revocation. This paragraph does not apply to the sale of spirituous liquors on the premises of and by an on-sale retailer. This paragraph also does not apply to a person consuming beer from a broken package in a public recreation area or on private property with permission of the owner or lessor or on the walkways surrounding such private property or to a person consuming beer or wine from a broken package in a public recreation area as part of a special event or festival that is conducted under a license secured pursuant to section 4-203.02 or 4-203.03.
21. For a person to have possession of or to transport spirituous liquor which is manufactured in a distillery, winery, brewery or rectifying plant contrary to the laws of the United States and this state. Any property used in transporting such spirituous liquor shall be forfeited to the state and shall be seized and disposed of as provided in section 4-221.
22. For an on-sale retailer or employee to allow a person under the legal drinking age to remain in an area on the licensed premises during those hours in which its primary use is the sale, dispensing or consumption of alcoholic beverages after the licensee, or the licensee's employees, know or should have known that the person is under the legal drinking age. An on-sale retailer may designate an area of the licensed premises as an area in which spirituous liquor will not be sold or consumed for the purpose of allowing underage persons on the premises if the designated area is separated by a physical barrier and at no time will underage persons have access to the area in which spirituous liquor is sold or consumed. A licensee or an employee of a licensee may require a person who intends to enter a licensed premises or a portion of a licensed premises where persons under the legal drinking age are prohibited under this section to exhibit a written instrument of identification that is acceptable under section 4-241 as a condition of entry. The director, or a municipality, may adopt rules to regulate the presence of underage persons on licensed premises provided the rules adopted by a municipality are more stringent than those adopted by the director. The rules adopted by the municipality shall be adopted by local ordinance and shall not interfere with the licensee's ability to comply with this paragraph. This paragraph does not apply:
(a) If the person under the legal drinking age is accompanied by a spouse, parent or legal guardian of legal drinking age or is an on-duty employee of the licensee.
(b) If the owner, lessee or occupant of the premises is a club as defined in section 4-101, paragraph 7, subdivision (a) and the person under the legal drinking age is any of the following:

(i) An active duty military service member.
(ii) A veteran.
(iii) A member of the United States army national guard or the United States air national guard.
(iv) A member of the United States military reserve forces.
(c) To the area of the premises used primarily for the serving of food during the hours when food is served.
23. For an on-sale retailer or employee to conduct drinking contests, to sell or deliver to a person an unlimited number of spirituous liquor beverages during any set period of time for a fixed price, to deliver more than forty ounces of beer, one liter of wine or four ounces of distilled spirits in any spirituous liquor drink to one person at one time for that person's consumption or to advertise any practice prohibited by this paragraph. The provisions of this paragraph do not prohibit an on-sale retailer or employee from selling and delivering an opened, original container of distilled spirits if:
(a) Service or pouring of the spirituous liquor is provided by an employee of the on-sale retailer.
(b) The employee of the on-sale retailer monitors consumption to ensure compliance with this paragraph. Locking devices may be used, but are not required.
24. For a licensee or employee to knowingly permit the unlawful possession, use, sale or offer for sale of narcotics, dangerous drugs or marijuana on the premises. As used in this paragraph, "dangerous drug" has the same meaning prescribed in section 13-3401.
25. For a licensee or employee to knowingly permit prostitution or the solicitation of prostitution on the premises.
26. For a licensee or employee to knowingly permit unlawful gambling on the premises.
27. For a licensee or employee to knowingly permit trafficking or attempted trafficking in stolen property on the premises.
28. For a licensee or employee to fail or refuse to make the premises or records available for inspection and examination as provided in this title or to comply with a lawful subpoena issued under this title.
29. For any person other than a peace officer or a member of a sheriff's volunteer posse while on duty who has received firearms training that is approved by the Arizona peace officer standards and training board, the licensee or an employee of the licensee acting with the permission of the licensee to be in possession of a firearm while on the licensed premises of an on-sale retailer. This paragraph shall not be construed to include a situation in which a person is on licensed premises for a limited time in order to seek emergency aid and such person does not buy, receive, consume or possess spirituous liquor. This paragraph shall not apply to:
(a) Hotel or motel guest room accommodations.
(b) The exhibition or display of a firearm in conjunction with a meeting, show, class or similar event.
(c) A person with a permit issued pursuant to section 13-3112 who carries a concealed handgun on the licensed premises of any on-sale retailer that has not posted a notice pursuant to section 4-229.
30. For a licensee or employee to knowingly permit a person in possession of a firearm other than a peace officer or a member of a sheriff's volunteer posse while on duty who has received firearms training that is approved by the Arizona peace officer standards and training board, the licensee or an employee of the licensee acting with the permission of the licensee to remain on the licensed premises or to serve, sell or furnish spirituous liquor to a person in possession of a firearm while on the licensed premises of an on-sale retailer. It shall be a defense to action under this paragraph if the licensee or employee requested assistance of a peace officer to remove such person. This paragraph shall not apply to:
(a) Hotel or motel guest room accommodations.
(b) The exhibition or display of a firearm in conjunction with a meeting, show, class or similar event.
(c) A person with a permit issued pursuant to section 13-3112 who carries a concealed handgun on the licensed premises of any on-sale retailer that has not posted a notice pursuant to section 4-229.
31. For any person in possession of a firearm while on the licensed premises of an on-sale retailer to consume spirituous liquor. This paragraph does not prohibit the consumption of small amounts of spirituous liquor by an undercover peace officer on assignment to investigate the licensed establishment.

32. For a licensee or employee to knowingly permit spirituous liquor to be removed from the licensed premises, except in the original unbroken package. This paragraph does not apply to any of the following:
(a) A person who removes a bottle of wine which has been partially consumed in conjunction with a purchased meal from licensed premises if a cork is inserted flush with the top of the bottle or the bottle is otherwise securely closed.
(b) A person who is in licensed premises that have noncontiguous portions that are separated by a public or private walkway or driveway and who takes spirituous liquor from one portion of the licensed premises across the public or private walkway or driveway directly to the other portion of the licensed premises.
(c) A bar, beer and wine bar, liquor store, beer and wine store or microbrewery licensee who dispenses beer only in a clean container composed of a material approved by a national sanitation organization with a maximum capacity that does not exceed one gallon and not for consumption on the premises if:
(i) The licensee or the licensee's employee fills the container at the tap at the time of sale.
(ii) The container is sealed with a plastic adhesive and displays a government warning label.
(iii) The dispensing of that beer is not done through a drive-through or walk-up service window.
The department shall review the effects of this subdivision and submit a report by July 1, 2015 on the effects of this subdivision to the governor, the speaker of the house of representatives and the president of the senate. The department shall provide a copy of this report to the secretary of state.
33. For a person who is obviously intoxicated to buy or attempt to buy spirituous liquor from a licensee or employee of a licensee or to consume spirituous liquor on licensed premises.
34. For a person under twenty-one years of age to drive or be in physical control of a motor vehicle while there is any spirituous liquor in the person's body.
35. For a person under twenty-one years of age to operate or be in physical control of a motorized watercraft that is underway while there is any spirituous liquor in the person's body. For the purposes of this paragraph, "underway" has the same meaning prescribed in section 5-301.
36. For a licensee, manager, employee or controlling person to purposely induce a voter, by means of alcohol, to vote or abstain from voting for or against a particular candidate or issue on an election day.
37. For a licensee to fail to report an occurrence of an act of violence to either the department or a law enforcement agency.
38. For a licensee to use a vending machine for the purpose of dispensing spirituous liquor.
39. For a licensee to offer for sale a wine carrying a label including a reference to Arizona or any Arizona city, town or geographic location unless at least seventy-five per cent by volume of the grapes used in making the wine were grown in Arizona.
40. For a retailer to knowingly allow a customer to bring spirituous liquor onto the licensed premises, except that an on-sale retailer may allow a wine and food club to bring wine onto the premises for consumption by the club's members and guests of the club's members in conjunction with meals purchased at a meeting of the club that is conducted on the premises and that at least seven members attend. An on-sale retailer who allows wine and food clubs to bring wine onto its premises under this paragraph shall comply with all applicable provisions of this title and any rules adopted pursuant to this title to the same extent as if the on-sale retailer had sold the wine to the members of the club and their guests. For the purposes of this paragraph, "wine and food club" means an association that has more than twenty bona fide members paying at least six dollars per year in dues and that has been in existence for at least one year.
41. For a person under twenty-one years of age to have in the person's body any spirituous liquor. In a prosecution for a violation of this paragraph:
(a) Pursuant to section 4-249, it is a defense that the spirituous liquor was consumed in connection with the bona fide practice of a religious belief or as an integral part of a religious exercise and in a manner not dangerous to public health or safety.
(b) Pursuant to section 4-226, it is a defense that the spirituous liquor was consumed for a bona fide medicinal purpose and in a manner not dangerous to public health or safety.
42. For an employee of a licensee to accept any gratuity, compensation, remuneration or consideration of any kind to either:

(a) Permit a person who is under twenty-one years of age to enter any portion of the premises where that person is prohibited from entering pursuant to paragraph 22 of this section.
(b) Sell, furnish, dispose of or give spirituous liquor to a person who is under twenty-one years of age.
43. For a person to purchase, offer for sale or use any device, machine or process which mixes spirituous liquor with pure oxygen or another gas to produce a vaporized product for the purpose of consumption by inhalation or to allow patrons to use any item for the consumption of vaporized spirituous liquor.
44. For a retail licensee or an employee of a retail licensee to sell spirituous liquor to a person if the retail licensee or employee knows the person intends to resell the spirituous liquor.
45. Except as authorized by paragraph 32, subdivision (c) of this section, for a person to reuse a bottle or other container authorized for use by the laws of the United States or any agency of the United States for the packaging of distilled spirits or for a person to increase the original contents or a portion of the original contents remaining in a liquor bottle or other authorized container by adding any substance.

4-244.02. Unlawful importation of spirituous liquor; exceptions
A. It is unlawful for any person, not a qualified licensee under this title, to import spirituous liquors into this state from a foreign country unless:
1. Such person is the legal drinking age.
2. Such person has been physically within such foreign country immediately prior to such importation and such importation coincides with his return from such foreign country.
3. Except as provided in subsection B, the amount of spirituous liquor imported does not exceed the amount permitted by federal law to be imported duty-free, in any period of thirty-one days, except that if the federal law prescribing such duty-free limitation is repealed or amended, then in no event shall the amount of duty-free importation into this state be more than one liter of spirituous liquor during such period.
B. To the extent permitted by federal law, a member of the Arizona national guard, the United States armed forces reserves or the armed forces of the United States may import more than one liter of spirituous liquor for personal use into this state if the importation coincides with that person's return from a tour of duty in a foreign country. A person who imports more spirituous liquor pursuant to this subsection than the amount permitted by federal law to be imported duty-free shall be responsible for the payment of any federal taxes due on the quantity of spirituous liquor that exceeds the duty-free amount. The department may issue letters of exemption to allow military personnel to import spirituous liquor pursuant to this subsection.

4-244.04. Farm winery sampling
Notwithstanding section 4-244, paragraphs 13 and 19, a representative of a licensed farm winery may consume small amounts and may serve the products of the licensed farm winery on the premises of an off-sale retailer or a retailer with off-sale privileges for the purpose of sampling the products of the farm winery. The licensee of the farm winery is liable for any violations of this title committed in connection with such sampling. The director shall regulate the manner of conducting such samplings to prevent abusive practices. The licensed retailer shall make sales of farm winery products from the licensed retail premises.

4-244.05. Unlicensed business establishment or premises; unlawful consumption of spirituous liquor; civil penalty; seizure and forfeiture of property
A. A person owning, operating, leasing, managing or controlling a business establishment or business premises which are not properly licensed pursuant to this title and in which any of the following occur shall not allow the consumption of spirituous liquor in the establishment or on the premises:
1. Food or beverages are sold.

2. Entertainment is provided.
3. A membership fee or a cover charge for admission is charged.
4. A minimum purchase or rental requirement for goods or services is charged.
B. A person shall not consume spirituous liquor in a business establishment or on business premises which are not properly licensed pursuant to this title in which food or beverages are sold, entertainment is provided, a membership fee or a cover charge for admission is charged or a minimum purchase or rental requirement for goods or services is charged.
C. In addition to or in lieu of other fines or civil penalties imposed for a violation of this section or any other action taken by the board or director, the board or director may conduct a hearing subject to the requirements of section 4-210, subsection G to determine whether a person has violated subsection A of this section. If the board or director determines, after a hearing, that a person has violated subsection A of this section the board or director may impose a civil penalty of not less than two hundred nor more than five thousand dollars for each offense. A civil penalty imposed pursuant to this section by the director may be appealed to the board.
D. In addition to any other remedies provided by law, any monies used or obtained in violation of this chapter may be seized by any peace officer if the peace officer has probable cause to believe that the money has been used or is intended to be used in violation of this section.
E. In addition to any other remedies provided by law, the records of an establishment that is in violation of this section may be seized by any peace officer if the peace officer has probable cause to believe that the establishment is operating without a valid license issued pursuant to this title.
F. In addition to any other remedies provided by law, any amount of alcohol may be seized by any peace officer if the peace officer has probable cause to believe that the alcohol is being used or is intended to be used in violation of this section.
G. In addition to any other remedies provided by law, the following property shall be forfeited pursuant to section 13-2314 or title 13, chapter 39:
1. All proceeds and other assets that are derived from a violation of this section.
2. Anything of value that is used or intended to be used to facilitate a violation of this section.
H. A person who obtains property through a violation of this section is deemed to be an involuntary trustee of that property. An involuntary trustee and any other person who obtains the property, except a bona fide purchaser who purchases the property for value without notice of or participation in the unlawful conduct, holds the property, including its proceeds and other assets, in constructive trust for the benefit of the persons entitled to remedies pursuant to section 13-2314 or title 13, chapter 39.
I. The board or director may adopt rules authorizing and prescribing limitations for the possession or consumption of spirituous liquor at establishments or premises falling within the scope of subsections A and B of this section. Rules adopted pursuant to this subsection shall authorize the possession or consumption of spirituous liquor only at establishments or premises which permit the consumption or possession of minimal amounts of spirituous liquor and which meet both of the following criteria:
1. The possession or consumption of spirituous liquor is permitted only as an incidental convenience to the customers of the establishment or premises.
2. The possession or consumption of spirituous liquor is permitted only within the hours of lawful sale as prescribed in this title, and is limited to no more than ten hours per day.
J. Any rules adopted pursuant to subsection I of this section shall prescribe:
1. The maximum permitted occupancy of an establishment or premises.
2. The hours during which spirituous liquor may be possessed or consumed.
3. The amount of spirituous liquor that a person may possess or consume.
4. That the director, the director's agents and any peace officer empowered to enforce the provisions of this title, in enforcing the provisions of this title, may visit and inspect the establishment or premises during the business hours of the premises or establishment. The director may charge a fee for the inspection of unlicensed premises to review an application for exemption pursuant to this section.
K. Any rules adopted pursuant to subsection I of this section may prescribe separate classifications of establishments or premises at which spirituous liquor may be possessed or consumed and may establish

any other provisions relating to the possession or consumption of spirituous liquor at establishments or premises falling within the scope of subsections A and B of this section which are necessary to maintain the health and welfare of the community.
L. This section does not apply to establishments or premises that are not licensed pursuant to this title and on which occurs the consumption of spirituous liquor if the establishment or premises are owned, operated, leased, managed or controlled by the United States, this state or a city or county of this state.

4-246. Violation; classification
A. A person violating any provision of this title is guilty of a class 2 misdemeanor unless another classification is prescribed.
B. A person violating section 4-244, paragraph 9, 14, 34, 42 or 44 is guilty of a class 1 misdemeanor.
C. A person violating section 4-229, subsection B, or section 4-244, paragraph 31 is guilty of a class 3 misdemeanor.
D. In addition to any other penalty prescribed by law, the court may suspend the privilege to drive of a person under eighteen years of age for a period of up to one hundred eighty days on receiving the record of the person's first conviction for a violation of section 4-244, paragraph 9.
E. In addition to any other penalty prescribed by law, a person who is convicted of a violation of section 4-244, paragraph 42 shall pay a fine of at least five hundred dollars.
F. In addition to any other penalty prescribed by law, a person who is convicted of a violation of section 4-241, subsection L, M or N shall pay a fine of at least two hundred fifty dollars.

4-247. Peace officers
No provision in this title shall be construed as limiting the rights and duties of any peace officer to enforce any provision of this chapter.

4-248. Reporting by court of convictions; definition
A. Every court having jurisdiction over violations of this title shall forward to the department a record of the conviction of a person in the court for a violation of any of the provisions of this title except section 4-241, subsection C, D, E or G, section 4-244, paragraph 9, if the violator is not a licensee or an employee or agent of a licensee, section 4-244, paragraph 20 and section 4-251.
B. For the purposes of this section "conviction" means a final conviction. A forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, is equivalent to a conviction.

4-249. Consumption of liquor by underage person in religious service allowed
The dispensing to or possession or consumption by a person under the legal drinking age of spirituous liquor in the performance of a religious service or ceremony is not prohibited by this title.

4-250. Distilled spirits pricing; prohibition
A. Out-of-state producers or suppliers of distilled spirits products shall not sell the products to an Arizona wholesaler at a cost higher than the lowest price at which the item was sold by the producer or supplier, or any other person, to any wholesaler anywhere in any other state or in the District of Columbia, or to any state or state agency which owns and operates a retail liquor store.
B. The director may require a producer or supplier of distilled spirits products to file an affirmation statement on a form prescribed by the director verifying the bottle and case price as well as any discounts then in effect.

4-250.01. Out-of-state person engaged in business as producer, exporter, importer or rectifier; violation; cease and desist order; civil penalty

A. An out-of-state person engaged in business as a producer, exporter, importer or rectifier shall comply with this title as if licensed by this state. An out-of-state person engaged in business as a producer, exporter, importer or rectifier who violates this title is subject to a fine or a civil penalty and suspension or revocation of the right to do business in this state.

B. If the director has reasonable cause to believe that an out-of-state person engaged in business as a producer, exporter, importer or rectifier is acting in violation of this title, the director may serve a cease and desist order requiring the person to cease and desist the violation.

C. The director may impose a civil penalty up to one hundred fifty thousand dollars per violation against an out-of-state person who is engaged in business as a producer, exporter, importer or rectifier and who knowingly violates a cease and desist order issued by the director pursuant to subsection B of this section.

4-251. Spirituous liquor in motor vehicles; prohibitions; violation; classification; exceptions; definitions

A. It is unlawful for any person to:

1. Consume spirituous liquor while operating or while within the passenger compartment of a motor vehicle that is located on any public highway or right-of-way of a public highway in this state.

2. Possess an open container of spirituous liquor within the passenger compartment of a motor vehicle that is located on any public highway or right-of-way of a public highway in this state.

B. A person who violates subsection A of this section is guilty of a class 2 misdemeanor.

C. This section does not apply to:

1. A passenger in any bus, limousine or taxi.

2. A passenger in the living quarters of a motor home as defined in section 28-4301.

D. For the purposes of this section:

1. "Motor vehicle" means any vehicle that is driven or drawn by mechanical power and that is designed primarily for use on public highways. Motor vehicle does not include a vehicle operated exclusively on rails.

2. "Open container" means any bottle, can, jar or other receptacle that contains spirituous liquor and that has been opened, has had its seal broken or the contents of which have been partially removed.

3. "Passenger compartment" means the area of a motor vehicle designed for the seating of the driver and other passengers of the vehicle. Passenger compartment includes an unlocked glove compartment and any unlocked portable devices within the immediate reach of the driver or any passengers. Passenger compartment does not include the trunk, a locked glove compartment or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

4. "Public highway or right-of-way of a public highway" means the entire width between and immediately adjacent to the boundary lines of every way maintained by the federal government, this state or a county, city or town if any part of the way is generally open to the use of the public for purposes of vehicular travel.

4-261. Warning signs; consumption of spirituous liquor during pregnancy; composition of signs; rules; inspection of premises; penalty

A. An off-sale retailer or an on-sale retailer shall post one or more signs on the premises where spirituous liquor is sold that clearly warn pregnant women of the dangers of consuming spirituous liquor during pregnancy. A sign shall be conspicuously placed in the retail establishment in a position that assures it is likely to be read.

B. The sign required by this section shall contain the following language:

"Warning

Drinking alcoholic beverages, including
distilled spirits, beer, coolers and wine,
during pregnancy can cause birth defects."
C. The department of liquor licenses and control shall prepare the signs required by this section and make them available at no cost to off-sale retailers and on-sale retailers.
D. The signs required by this section shall be composed of block, capital letters printed in black on white laminated paper at a minimum weight of one hundred ten pound index. The lettering shall consume a space at least six inches by nine inches. The letters comprising the word "warning" shall be at least three-fourths of a vertical inch and all other letters shall be at least one-half of a vertical inch.
E. An on-sale retailer shall post the sign required by this section either within twenty feet of each register where sales of spirituous liquor are made or behind the bar from which spirituous liquor is served.
F. A hotel-motel licensee shall do one of the following:
1. Post at least one sign that is required by this section and that is supplied by this state on the inside of the front door of each guest room that contains a mini-bar or in each guest room where spirituous liquor is available through room service.
2. Display the warning language as set forth in subsection B in a space measuring at least one inch by two inches on a room service bar menu, mini-bar cost list, placard, folder, advertisement tent or similar item that is placed in a conspicuous place in each guest room that assures it is likely to be read.
G. A retail licensee that uses a mobile service device for the sale of spirituous liquor shall display the sign required by this section on such mobile service device.
H. Each off-sale licensee shall conspicuously post the sign required by this section where a customer obtains the spirituous liquor.
I. The department shall adopt rules pertaining to the posting of the signs required by this section.
J. Upon a determination that a licensee is in violation of the provisions of this section, the director shall notify the licensee of the violation. If, after thirty days, the licensee has not corrected the violation, the licensee is subject to a penalty not to exceed five hundred dollars.

4-262. Display of license
All retail licensees shall display the liquor license in a conspicuous public area of the licensed premises that is readily accessible for inspection by any peace officer, distributor, wholesaler or member of the public.

4-301. Liability limitation; social host
A person other than a licensee or an employee of a licensee acting during the employee's working hours or in connection with such employment is not liable in damages to any person who is injured, or to the survivors of any person killed, or for damage to property, which is alleged to have been caused in whole or in part by reason of the furnishing or serving of spirituous liquor to a person of the legal drinking age.

4-302. Notice of litigation
A. A person filing a claim for relief seeking damages from a licensee and alleging that a person was injured or damage occurred which was caused in whole or in part by reason of the furnishing or serving of spirituous liquor by the licensee or an employee of the licensee to any person shall file a copy of the complaint with the department within ten days after filing the complaint.
B. A licensee who has been served with a complaint alleging the provisions of subsection A shall file a copy of the complaint with the department within ten days after the service.
C. A licensee or controlling person who files a petition in bankruptcy shall file notice of the petition with the department within ten days after the filing or entry and shall advise the department within ten days of a dismissal or discharge by any means.

D. A licensee or controlling person who files a bankruptcy dismissal or discharge shall file notice of the dismissal or discharge with the department within ten days after the filing.

4-311. Liability for serving intoxicated person or minor; definition

A. A licensee is liable for property damage and personal injuries or is liable to a person who may bring an action for wrongful death pursuant to section 12-612, or both, if a court or jury finds all of the following:

1. The licensee sold spirituous liquor either to a purchaser who was obviously intoxicated, or to a purchaser under the legal drinking age without requesting identification containing proof of age or with knowledge that the person was under the legal drinking age.
2. The purchaser consumed the spirituous liquor sold by the licensee.
3. The consumption of spirituous liquor was a proximate cause of the injury, death or property damage.

B. No licensee is chargeable with knowledge of previous acts by which a person becomes intoxicated at other locations unknown to the licensee unless the person was obviously intoxicated. If the licensee operates under a restaurant license, the finder of fact shall not consider any information obtained as a result of a restaurant audit conducted pursuant to section 4-213 unless the court finds the information relevant.

C. For the purposes of subsection A, paragraph 2 of this section, if it is found that an underage person purchased spirituous liquor from a licensee and such underage person incurs or causes injuries or property damage as a result of the consumption of spirituous liquor within a reasonable period of time following the sale of the spirituous liquor, it shall create a rebuttable presumption that the underage person consumed the spirituous liquor sold to such person by the licensee.

D. For the purposes of this section, "obviously intoxicated" means inebriated to such an extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

4-312. Liability limitation

A. A licensee is not liable in damages to any consumer or purchaser of spirituous liquor over the legal drinking age who is injured or whose property is damaged, or to survivors of such a person, if the injury or damage is alleged to have been caused in whole or in part by reason of the sale, furnishing or serving of spirituous liquor to that person. A licensee is not liable in damages to any other adult person who is injured or whose property is damaged, or to the survivors of such a person, who was present with the person who consumed the spirituous liquor at the time the spirituous liquor was consumed and who knew of the impaired condition of the person, if the injury or damage is alleged to have been caused in whole or in part by reason of the sale, furnishing or serving of spirituous liquor.

B. Subject to the provisions of subsection A of this section and except as provided in section 4-311, a person, firm, corporation or licensee is not liable in damages to any person who is injured, or to the survivors of any person killed, or for damage to property which is alleged to have been caused in whole or in part by reason of the sale, furnishing or serving of spirituous liquor.

F-2

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-0404)
Title 18, Chapter 11, Article 3, Reclaimed Water Quality Standards

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-2**

TO: Members of the Governor's Regulatory Review Council

FROM: Shama Thathi, Staff Attorney

DATE : May 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-0404)**
Title 18, Chapter 11, Article 3, Reclaimed Water Quality Standards

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Environmental Quality (Department) is to "consolidate and focus responsibility for environmental management and administration of water quality, air quality, solid waste and hazardous waste regulation with the goal of increasing effectiveness, efficiency and public acceptance of environmental regulation." Laws 2014, Ch. 247, § 7.

This five-year-review report covers nine rules and one table in A.A.C. Title 18, Chapter 11, Article 3, which relate to reclaimed water quality standards. Reclaimed water is treated or processed by a wastewater treatment plant or on-site wastewater treatment plant. Reclaimed water can be used to offset demands on the potable water supply, such as in crop and landscape irrigation. The rules establish five classes of reclaimed water based on protection of public health and groundwater standards. The classes of reclaimed water determine the allowable end uses of the water, which include crop irrigation, residential and school landscape irrigation, and recreational impoundments.

Article Contents

Article 1 contains nine rules and one table that address reclaimed water quality standards, related to definitions; applicability; class A+ reclaimed water; class A reclaimed water; class B+ reclaimed water; class B reclaimed water; class C reclaimed water; industrial reuse; reclaimed water quality for an unlisted type of direct reuse; and minimum reclaimed water quality requirements for direct reuse.

Year that Each Rule was Last Amended or Newly Made

The rules and table were last amended on January 7, 2001.

Proposed Action

The Department anticipates submitting a rulemaking package to the Council by June 2017.

Summary of Reasons for the Proposed Action

The Department indicates that the rules should be amended to address the written criticisms received during the last five years and to improve enforceability of the rules.

Exemption or Request and Approval for Exception from the Moratorium

The Department received an approval for an exception from the moratorium from the Governor's Office in November 2015.

Substantive or Procedural Concerns

None**.**

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

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

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

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

Yes. The Department indicates that all rules are effective except R18-11-301, which should be updated to reference the correct statutory citation for definitions such as "on-site wastewater treatment facility" and "gray water."

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

Yes. The Department has received comments in regards to sampling and compliance requirements for fecal coliform, which is required under R18-11-303 through 307. In a regulatory review report dated September 1, 2015, the Department discussed reevaluating the monitoring procedures for performance requirements to allow for less burdensome monitoring. Moreover, the Department plans to evaluate sampling requirements in its future rulemakings.

The Department is also aware of newspaper articles addressing the possible health risks of using reclaimed water. The Department is monitoring the research on endocrine disrupting compounds and pharmaceutical and personal care products, but the Department indicates that standard monitoring and testing do not yet exist for many of the contaminants of concern. In addition, the U.S. Environmental Protection Agency has not established standards for such contaminants. The Department plans to continue research in order to determine whether further rulemaking is warranted.

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

Yes. As general authority, the Department cites to A.R.S. § 49-203(A)(1), under which the Department shall "adopt, by rule, water quality standards in the form and subject to the considerations prescribed by [A.R.S. Title 49, Chapter 1, Article 2]." Further, the Department has specific authority under A.R.S. § 49-221(E) to adopt water quality standards for direct use of reclaimed water.

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

Yes. The Department indicates that the rules are consistent with other rules and statutes.

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

Yes. The Department indicates that the rules are enforced as written with the following exceptions:

- R18-11-301 contains outdated statutory references and therefore, the definitions in this rule are not enforceable.
- R18-11-302 is not directly enforceable because it only describes where the reclaimed water quality standards apply and do not apply.

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

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

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Not applicable. The Department indicates that the rules do not correspond to any federal laws.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

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

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

Not applicable. The rules were adopted before July 29, 2010 and do not require issuance of a permit, license or agency authorization.

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

Not applicable.

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

Yes. The Department did not propose any action in its 2011 five-year-review report, and no actions were taken.

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

Yes. As noted above, the Department plans to submit a rulemaking package to the Council by June 2017. The Department has already filed a Notice of Docket Opening for reclaimed water rules, including pipeline and water conveyances, permitting requirements, and uses and standards. See 22 A.A.R. 16.

Conclusion

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

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-2**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : May 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-16-0404)**
Title 18, Chapter 11, Article 3, Reclaimed Water Quality Standards

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

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

The economic, small business, and consumer impact statement (EIS) from the most recent Department rulemaking completed in 2001 was reviewed for Article 3.

The rules address the quality standards of reclaimed water. These rules list and define the various classifications for reclaimed water as well as the acceptable uses of each class of reclaimed water.

Key stakeholders that are impacted by the rules are the Department, reclaimed water users, and the general public. Using reclaimed water in place of potable water reduces the strain on Arizona's limited groundwater and surface water resources. Without proper regulation, however, reclaimed water could potentially present health hazards to the general public.

Reclaimed water users are the only businesses that will be directly affected by these rules. These rules establish permitting requirements, allowable end uses, and technical standards for conveyances of reclaimed water. Any regulatory burden is more than offset by the substantially lower cost of reclaimed water compared to potable water.

The Department lists five distinct classes of reclaimed water: A+, A, B+, B, and C. Higher grades of reclaimed water have undergone more treatment than lower grades. A minimum acceptable treatment grade is applied to all reclaimed water uses to ensure protection of human health. An additional category for specific industrial reuse exists, but the Department makes permit determinations on a case by case basis for this classification.

In 2000, there were 139 active reclaimed water general permits. This number increased to 462 reclaimed water general permits in 2015. The classes of these permits are broken down as follows:

- 390 Class A+
- 13 Class A
- 41 Class B+
- 19 Class B
- 9 Class C

The Department concludes that the economic impact has generally been as predicted in the prior EIS for the rules.

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

The Department determines that the rules could be improved. Since the 2001 rulemaking, the Department has gained experience implementing this program. The Department also acknowledges that technological advances in reclaimed water technology can provide additional opportunities to improve the rules. In order to improve the rules, the Department intends to submit a final rulemaking package by June 2017 provided the moratorium is ended or the Department is granted an exemption.

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

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

4. <u>Conclusion</u>

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

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

January 27, 2016

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

Re: Title 18, Chapter 11, Article 3

Dear Ms. Ong:

The Arizona Department of Environmental Quality has reviewed Title 18, Chapter 11, Article 3 pursuant to A.R.S. § 41-1056 and the Governor's Regulatory Review Council's five-year review schedule. Enclosed is a report of the Department's findings, proposed courses of action and reasons, and justifications. I certify that this agency is in compliance with A.R.S. § 41-1091.

You may contact Wendy LeStarge with questions on the report at (602) 771-4836 or e-mail at wl1@azdeq.gov.

Sincerely,

Misael Cabrera
Director

Enclosures: Five-Year Review Report

FIVE-YEAR REVIEW REPORT

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER QUALITY STANDARDS

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

Introduction

Reclaimed water is defined as "water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility." A.R.S. § 49-201(32). Wastewater from residences and businesses is processed and treated by a wastewater treatment plant to remove solids, and destroy or reduce pollutants and harmful organisms. One of the byproducts from the treatment process is reclaimed water, which is wastewater treated to prescribed standards and that can be used beneficially to offset demands on the water supply.

Arizona's first rules regarding reclaimed water were promulgated in 1972, by the Arizona Department of Health Services. These rules established effluent quality requirements for various irrigation uses and industrial reuse and monitoring requirements for the wastewater. In 1986, the Arizona Department of Environmental Quality became responsible for the reuse rules. The existing rules on reuse of reclaimed water were promulgated in 2001 as part of a major stakeholder process to rewrite ADEQ's water quality permitting rules. ADEQ now regulates reclaimed water through four sets of rules.

- Water quality standards are set in 18 A.A.C. 11, Article 3 (Reclaimed Water Quality Standards), which establishes five classes of reclaimed water based on protection of public health and groundwater quality (A+, A, B+, B, and C). Allowable end uses, corresponding with the water quality class designations, are also included in this Article. End uses include crop irrigation, residential and school ground landscape irrigation, toilet and urinal flushing, and recreational impoundments.
- 18 A.A.C. 9, Article 6 (Reclaimed Water Conveyances) establishes technical criteria for the design and construction of reclaimed water distribution systems.
- 18 A.A.C. 9, Article 7 (Direct Reuse of Reclaimed Water) governs ADEQ's system for reclaimed water permitting, mainly through general permits for end users.
- The Aquifer Protection Permit (APP) rules for sewage treatment in 18 A.A.C. 9, Articles 1 through 4 regulate the sewage treatment facility, which is the generator of the reclaimed water. If the sewage treatment facility will generate reclaimed water for reuse, the APP designates the applicable class of reclaimed water (A+, A, B+, B, or C) and prescribes the monitoring requirements for the facility that ensures that the quality of the reclaimed water for the designated class will always be met.

A. Information That Is Identical For Rules (unless noted differently in the Section-by-Section Analysis of Rules)

1. Authorization of rules by existing statutes:

The rules in 18 A.A.C. 11, Article 3 are authorized generally by A.R.S. § 49-203(A)(1), with specific statute authorization from A.R.S. § 49-221(E).

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

ADEQ uses the following statutes and rules to determine that the rules are consistent: A.R.S. § 49-221; 18 A.A.C. Chapter 9, Articles 1 through 4. ADEQ’s rules are consistent with the applicable statutes and

rules, unless stated otherwise in the Section-By-Section Analysis.

5. Status of Agency enforcement policy regarding the rules:

The reclaimed water quality standards rules are not enforced on their own, but are implemented through the APP and reclaimed water permitting programs.

A sewage treatment facility is the generator of the reclaimed water and must be issued an APP to discharge wastewater. If the sewage treatment facility will generate reclaimed water for reuse, the APP designates the applicable class of reclaimed water (A+, A, B+, B, or C) and prescribes the monitoring requirements for the facility that ensure that the quality of the reclaimed water for the designated class will always be met.

The reclaimed water permits in 18 A.A.C. 9, Article 7, establish the provisions relating to operation, maintenance, and reporting of volumes of reclaimed water used. The general permits established in rule are based on the class and end use of reclaimed water.

Arizona Revised Statutes § 49-261(A) grants ADEQ authority to take enforcement action for a violation of a rule adopted or a condition of a permit issued pursuant to A.R.S. § 49-203(A)(6). ADEQ's enforcement policies and strategies are described in the ADEQ Compliance and Enforcement Handbook, which is a consolidation of existing compliance and enforcement policies, procedures, and guidelines used by ADEQ when initiating and escalating enforcement.

6. Analysis of clarity, conciseness, and understandability:

The rules are clear, concise, and understandable.

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

ADEQ has received written criticism on some of the sampling and compliance requirements for fecal coliform, which are required under R18-11-303 through 307, specifically:

- Lack of clarity on the language regarding the four of the last seven reclaimed water sampling requirements;
- Stringency of the four of seven limit relative to the single sample daily maximum;
- Inconsistencies with similar APP sampling required for a sewage treatment facility;
- Potential additional compliance risk for short term (less than seven day) discharges; and
- Costs and logistics of daily sampling.

Also, in response to Executive Order 2015-01, paragraph 5, ADEQ submitted to the Office of the Governor an evaluation of its rules, with recommendations for which rules could be amended or repealed consistent with the priorities and principles set forth in the Order. In the September 1, 2015 Regulatory Review Report, ADEQ discusses re-evaluating the monitoring associated with performance requirements (for R18-11-304 through 307) to allow for less frequent/expensive monitoring. ADEQ plans to evaluate sampling requirements in its future rulemakings, as described in item #14.

While ADEQ has not received written criticisms, ADEQ is aware of Arizona newspaper articles within the past five years discussing the possible health risks of using reclaimed water. ADEQ continues to monitor the research, especially as related to endocrine disrupting compounds and pharmaceutical and personal care products. Neither standardized monitoring nor testing exists for many such contaminants, nor has the U.S. Environmental Protection Agency set water quality standards for such contaminants. ADEQ will continue to monitor the research to determine whether rulemaking is warranted.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

ADEQ prepared an economic, small business, and consumer impact statement when it promulgated these rules in January 2001 and described the probable economic impacts in qualitative terms. ADEQ believes that the qualitative assessments of the economic impacts of the rules remain accurate. ADEQ believes that the Article 3 rules' impact on the state's economy, small business and consumers has not changed since the January 22, 2001 effective date. Since reclaimed water quality standards rules are implemented through other programs, the best indicator on economic impact would be the number of reclaimed water permits, which allow the direct reuse of reclaimed water based on the class and end use of reclaimed water. The 2001 economic impact statement for Notice of Final Rulemaking on 18 A.A.C. 9, Articles 6 and 7 (7 A.A.R. 758, February 9, 2001) described that in 2000, ADEQ had 139 active reclaimed water reuse permits. In 2015, there are currently ten reclaimed water individual permits and 462 reclaimed water general permits. The general permits broken down by class of reclaimed water are as follows.

- Class A+ = 390
- Class A = 13
- Class B+ = 41
- Class B = 19
- Class C = 9

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

No such analysis was submitted for any rule in this Article.

10. Completion of previous proposed courses of action:

ADEQ did not propose any changes to the rules in the previous Five-Year Review report approved by the Governor's Regulatory Review Council at its May 3, 2011 meeting.

11. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

ADEQ believes that most of these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective. In response to Executive Order 2015-01, paragraph 5, ADEQ submitted to the Office of the Governor an evaluation of its rules, with recommendations for which rules could be amended or repealed consistent with the priorities and principles set forth in the Order. In the September 1, 2015 Regulatory Review Report, ADEQ discusses that the monitoring associated with performance requirements (for R18-11-304 through 307) should be re-evaluated and doing so should reduce or ameliorate a regulatory burden while achieving the same regulatory objective. ADEQ plans to evaluate sampling requirements in its future rulemakings, as described in item #14.

12. Stringency Compared to Corresponding Federal Law:

Article 3 does not have a corresponding federal law.

13. Compliance with A.R.S. § 41-1037:

As listed in item #8, the rules were amended before July 29, 2010. The rules in Article 3 do not require issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action:

These rules remain effective in providing a comprehensive approach to regulating the reuse of reclaimed water in Arizona, including permitting requirements, allowable end uses, and technical standards for

conveyances of reclaimed water, while still ensuring the safe use of reclaimed water. However, ADEQ recognizes there may be opportunities to further improve the 2001 rules in recognition of over 10 years of experience implementing the program and subsequent advances in the science and technology of reclaimed water reuse.

ADEQ received an exemption from the rulemaking moratorium from the Governor's office to begin rulemaking for reclaimed water rules, including the pipeline and water conveyances, permitting requirements, and uses and standards. ADEQ has filed two Notice of Docket Openings (22 A.A.R. 16, January 1, 2016). ADEQ is scheduling stakeholder meetings around the state to gather input on needed changes. With input from stakeholders, ADEQ will develop proposed rule changes. ADEQ anticipates submitting a rulemaking package to Council by June 2017.

B. Section-by-Section Analysis of Rules

R18-11-301. Definitions

2. Objective of the rules:

The definition section defines important terms used in Article 3, so that the rules are understandable to the general public, such as words with uncommon meanings, acronyms, and technical terms.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively defines important terms used in the rules. The rule could be more effective by correcting the statutory citation for on-site wastewater treatment facility and mirroring the statutory definition for gray water. Both changes result from 2006 amendments to A.R.S. § 49-201 (Definitions.) Also, the definition for sewage is not the same as the definition in R18-9-101(35), which was amended in November 2005.

5. Status of Agency enforcement policy regarding the rule:

Definitions are not enforceable.

R18-11-302. Applicability

2. Objective of the rules:

The objective of this rule is to define the scope of the reclaimed water quality standards and describe where the reclaimed water quality standards apply.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively describes the scope of the reclaimed water quality standards rules and prescribes two exclusions to the rules.

5. Status of Agency enforcement policy regarding the rule:

R18-11-302 is not directly enforceable. Rather, R18-11-302 describes where the reclaimed water quality standards apply and do not apply.

R18-11-303. Class A+ Reclaimed Water

2. Objective of the rules:

The objective of this rule is to establish the criteria for Class A+ reclaimed water and determine the parameters for compliance with the Class A+ reclaimed water quality criteria. Class A+ reclaimed water

has undergone additional treatment so that the reclaimed water has a total nitrogen concentration of less than 10 mg / L, which minimizes the risk of nitrate contamination of groundwater that may lie below reuse application sites.

None of the types of direct reuse listed in Table A or permits for direct reuse of reclaimed water (18 A.A.C. 9, Article 7) require Class A+ reclaimed water. The incentive for a permittee to voluntarily reuse Class A+ reclaimed water is that the permittee will not have to report on nitrogen management and application rates, or have a lining for an impoundment storing Class A+ reclaimed water (Compare requirements of A.A.C. 18-9-712 to 18-9-713).

3. Effectiveness of the rule in achieving the objectives:

The rule effectively establishes that Class A+ reclaimed water is a wastewater that has undergone a minimum of secondary treatment, nitrogen removal treatment, and high level disinfection. The rule also establishes the parameters for how a facility can achieve consistent compliance with the Class A+ reclaimed water quality criteria.

R18-11-304. Class A Reclaimed Water

2. Objective of the rules:

The objective of this rule is to establish the criteria for Class A reclaimed water and determine the parameters for compliance with the Class A reclaimed water quality criteria.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively establishes that Class A reclaimed water is a wastewater that has undergone a minimum of secondary treatment, and high level disinfection. The rule also establishes the parameters for how a facility can achieve consistent compliance with the Class A reclaimed water quality criteria.

R18-11-305. Class B+ Reclaimed Water

2. Objective of the rules:

The objective of this rule is to establish the criteria for Class B+ reclaimed water and determine the parameters for compliance with the Class B+ reclaimed water quality criteria. Class B+ reclaimed water has undergone additional treatment so that the reclaimed water has a total nitrogen concentration of less than 10 mg / L, which minimizes the risk of nitrate contamination of groundwater that may lie below reuse application sites.

None of the types of direct reuse listed in Table A or permits for direct reuse of reclaimed water (18 A.A.C. 9, Article 7) require Class B+ reclaimed water. The incentive for a permittee to voluntarily reuse Class B+ reclaimed water is that the permittee will not have to report on nitrogen management and application rates, or have a lining for an impoundment storing Class B+ reclaimed water (Compare requirements of A.A.C. 18-9-714 to A.A.C. 18-9-715).

3. Effectiveness of the rule in achieving the objectives:

The rule effectively establishes that Class B+ reclaimed water is a wastewater that has undergone a minimum of secondary treatment, filtration, nitrogen removal treatment, and disinfection. The rule also establishes the parameters for how a facility can achieve consistent compliance with the Class B+ reclaimed water quality criteria.

R18-11-306. Class B Reclaimed Water

2. Objective of the rules:

The objective of this rule is to establish the criteria for Class B reclaimed water and determine the parameters for compliance with the Class B reclaimed water quality criteria.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively establishes that Class B reclaimed water is a wastewater that has undergone a minimum of secondary treatment, filtration, and disinfection. The rule also establishes the parameters for how a facility can achieve consistent compliance with the Class B reclaimed water quality criteria.

R18-11-307. Class C Reclaimed Water

2. Objective of the rules:

The objective of this rule is to establish the criteria for Class C reclaimed water and determine the parameters for compliance with the Class C reclaimed water quality criteria.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively establishes that Class C reclaimed water is a wastewater that has undergone a minimum of secondary treatment, and some disinfection. The rule also establishes the parameters for how a facility can achieve consistent compliance with the Class C reclaimed water quality criteria.

R18-11-308. Industrial Reuse

2. Objective of the rules:

The objective of this rule is to establish a process to determine reclaimed water quality appropriate for reuse of industrial wastewater.

3. Effectiveness of the rule in achieving the objectives:

The rule effectively establishes a basis for reclaimed water quality requirements for reuse of industrial wastewater that are industry-specific and must be determined on a case-by-case basis.

R18-11-309. Reclaimed Water Quality Standards for an Unlisted Type of Direct Reuse

2. Objective of the rules:

The objective of this rule is to establish the requirements and a process to allow new ways to reuse reclaimed water that may be identified in the future.

3. Effectiveness of the rule in achieving the objectives:

This rule allows the Department to issue an individual reclaimed water quality permit for a new type of direct reuse that is not listed in Table A.

Table A. Minimum Reclaimed Water Quality Requirements for Direct Reuse

2. Objective of the rules:

The objective of this Table is to list the minimum water quality classification acceptable for each type of direct reuse.

3. Effectiveness of the rule in achieving the objectives:

This Table effectively provides the minimum acceptable water quality classification for each type of direct use.

In response to Executive Order 2015-01, paragraph 5, ADEQ submitted to the Office of the Governor an evaluation of its rules, with recommendations for which rules could be amended or repealed consistent with the priorities and principles set forth in the Order. In the September 1, 2015 Regulatory Review Report, ADEQ discusses increasing the number of allowable uses to include such uses as emergency wildfire fighting and riparian restoration.

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

R18-11-301. Definitions

The terms in this Article have the following meanings:

"Direct reuse" has the meaning prescribed in R18-9-701(1).

"Disinfection" means a treatment process that uses oxidants, ultraviolet light, or other agents to kill or inactivate pathogenic organisms in wastewater.

"Filtration" means a treatment process that removes particulate matter from wastewater by passage through porous media.

"Gray water" means wastewater, collected separately from a sewage flow, that originates from a clothes washer, bathtub, shower, or sink, but it does not include wastewater from a kitchen sink, dishwasher, or a toilet.

"Industrial wastewater" means wastewater generated from an industrial process.

"Landscape impoundment" means a manmade lake, pond, or impoundment of reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage, landscaping, or for aesthetic purposes only.

"NTU" means nepholometric turbidity unit.

"On-site wastewater treatment facility" has the meaning prescribed in A.R.S. § 49-201(24).

"Open access" means that access to reclaimed water by the general public is uncontrolled.

"Reclaimed water" has the meaning prescribed in A.R.S. § 49-201(31).

"Recreational impoundment" means a manmade lake, pond, or impoundment of reclaimed water where boating or fishing is an intended use of the impoundment. Swimming and other full-body recreation activities (for example, water-skiing) are prohibited in a recreational impoundment.

"Restricted access" means that access to reclaimed water by the general public is controlled.

"Secondary treatment" means a biological treatment process that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation at 40 CFR § 133.102.

"Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.

Historical Note

Adopted effective July 9, 1981 (Supp. 81-4). Former Section R9-21-301 renumbered without change as Section R18-11-301 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-302. Applicability

This Article applies to the direct reuse of reclaimed water, except for:

1. The direct reuse of gray water, or
2. The direct reuse of reclaimed water from an onsite wastewater treatment facility regulated by a general Aquifer Protection Permit under 18 A.A.C. 9, Article 3.

Historical Note

Adopted effective June 8, 1981 (Supp. 81-3). Amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-302 renumbered without change as Section R18-11-302 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-303. Class A+ Reclaimed Water

A. Class A+ reclaimed water is wastewater that has undergone secondary treatment, filtration, nitrogen removal treatment, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in (B)(1) is achieved without chemical addition.

B. An owner of a facility shall ensure that:

1. The turbidity of Class A+ reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
   a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
   b. The turbidity of filtered effluent does not exceed five NTUs at any time.
2. Class A+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
   c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A+ reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.
3. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.

C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A+ reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsection (B)(2) and the total nitrogen criteria in subsection (B)(3) before discharge to a reclaimed water distribution system.

D. Class A+ reclaimed water is not required for any type of direct reuse. A person may use Class A+ reclaimed water for any type of direct reuse listed in Table A.

Historical Note

Adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-303 renumbered without change as Section R18-11-303 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-304. Class A Reclaimed Water

A. Class A reclaimed water is wastewater that has undergone secondary treatment, filtration, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in subsection (B)(1) is achieved without chemical addition.

B. An owner of a facility shall ensure that:
1. The turbidity of Class A reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
   a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
   b. The turbidity of filtered effluent does not exceed five NTUs at any time.
2. Class A reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
   c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.

C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsection (B)(2) before discharge to a reclaimed water distribution system.

D. A person shall use Class A reclaimed water for a type of direct reuse listed as Class A in Table A. A person may use Class A reclaimed water for a type of direct reuse listed as Class B or Class C in Table A.

Historical Note

Adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-304 renumbered without change as Section R18-11-304 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-305. Class B+ Reclaimed Water

A. Class B+ reclaimed water is wastewater that has undergone secondary treatment, nitrogen removal treatment, and disinfection.

B. An owner of a facility shall ensure that:
1. Class B+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.
2. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.

C. Class B+ reclaimed water is not required for a type of direct reuse. A person may use Class B+ reclaimed water for a type of direct reuse listed as Class B or Class C in Table A. A person shall not use Class B+ reclaimed water for a type of direct reuse listed as Class A in Table A.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-306. Class B Reclaimed Water

A. Class B reclaimed water is wastewater that has undergone secondary treatment and disinfection.

B. An owner of a facility shall ensure that Class B reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
1. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
2. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.

C. A person shall use a minimum of Class B reclaimed water for a type of direct reuse listed as Class B in Table A. A person may use Class B reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class B reclaimed water for a type of direct reuse listed as Class A in Table A.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-307. Class C Reclaimed Water

A. Class C reclaimed water is wastewater that has undergone secondary treatment in a series of wastewater stabilization ponds, including aeration, with or without disinfection.

B. The owner of a facility shall ensure that:
1. The total retention time of Class C reclaimed water in wastewater stabilization ponds is at least 20 days.
2. Class C reclaimed water meets the following criteria after treatment and before discharge to a reclaimed water distribution system:
   a. The concentration of fecal coliform organisms in four of the last seven reclaimed water samples taken is less than 1000 / 100 ml.
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 4000 / 100 ml.

C. A person shall use a minimum of Class C reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class C reclaimed water for a type of direct reuse listed as Class A or Class B in Table A.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-308. Industrial Reuse

A. The reclaimed water quality requirements for the following direct reuse applications are industry-specific and shall be determined by the Department on a case-by-case basis in a reclaimed water permit issued by the Department under 18 A.A.C. 9, Article 7:
1. Direct reuse of industrial wastewater containing sewage.
2. Direct reuse of industrial wastewater for the production or processing of any crop used as human or animal food.

B. The Department shall use best professional judgment to determine the reclaimed water quality requirements needed to protect public health and the environment for a type of direct reuse specified in subsection (A).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-309. Reclaimed Water Quality Standards for an Unlisted Type of Direct Reuse

A. The Department may prescribe in an individual reclaimed water permit issued under 18 A.A.C. 9, Article 7, reclaimed water quality requirements for a type of direct reuse not listed in Table A. Before permitting a direct reuse of reclaimed water not listed in Table A, the Department shall, using its best professional judgment, determine and require compliance with reclaimed water quality requirements needed to protect public health and the environment.

B. Department may determine that Class A+, A, B+, B, or C reclaimed water is appropriate for a new type of direct reuse.

C. The Department shall consider the following factors when prescribing reclaimed water quality requirements for a new type of direct reuse:
1. The risk to public health;
2. The degree of public access to the site where the reclaimed water is reused and human exposure to the reclaimed water;
3. The level of treatment necessary to ensure that the reclaimed water is aesthetically acceptable;
4. The level of treatment necessary to prevent nuisance conditions;
5. Specific water quality requirements for the intended type of direct reuse;
6. The means of application of the reclaimed water;
7. The degree of treatment necessary to avoid a violation of surface water quality standards or aquifer water quality standards;
8. The potential for improper or unintended use of the reclaimed water;
9. The reuse guidelines, criteria, or standards adopted or recommended by the U.S. Environmental Protection Agency or other federal or state agencies that apply to the new type of direct reuse; and
10. Similar wastewater reclamation experience of reclaimed water providers in the United States.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

Table A. Minimum Reclaimed Water Quality Requirements for Direct Reuse

Type of Direct Reuse	Minimum Class of Reclaimed Water Required
Irrigation of food crops	A
Recreational impoundments	A
Residential landscape irrigation	A
Schoolground landscape irrigation	A
Open access landscape irrigation	A
Toilet and urinal flushing	A
Fire protection systems	A
Spray irrigation of an orchard or vineyard	A
Commercial closed loop air conditioning systems	A
Vehicle and equipment washing (does not include self-service vehicle washes)	A
Snowmaking	A
Surface irrigation of an orchard or vineyard	B
Golf course irrigation	B
Restricted access landscape irrigation	B
Landscape impoundment	B
Dust control	B
Soil compaction and similar construction activities	B
Pasture for milking animals	B
Livestock watering (dairy animals)	B
Concrete and cement mixing	B
Materials washing and sieving	B
Street cleaning	B
Pasture for non-dairy animals	C
Livestock watering (non-dairy animals)	C
Irrigation of sod farms	C
Irrigation of fiber, seed, forage, and similar crops	C
Silviculture	C

Note: Nothing in this Article prevents a wastewater treatment plant from using a higher quality reclaimed water for a type of direct reuse than the minimum class of reclaimed water listed in Table A. For example, a wastewater treatment plant may provide Class A reclaimed water for a type of direct reuse where Class B or Class C reclaimed water is acceptable.

Historical Note
New Table adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

R18-11-401. Definitions

In addition to the definitions contained in A.R.S. §§ 49-101 and 49-201, the terms of this Article shall have the following meanings:
1. "Beta particle and photon radioactivity from man-made radionuclides" means all radionuclides emitting beta particles or photons, except Thorium-232, Uranium-235, Uranium-238 and their progeny.
2. "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements.
3. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.

Reclaimed Water Standards Statutes

49-203. Powers and duties of the director and department

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.

2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.

4. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants which are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.

5. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

6. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.

7. Adopt, by rule or as permit conditions, such discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and such other standards and conditions as are reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.

8. Except as prescribed by section 49-255.01, subsection J, assess and collect fees to cover, as necessary, reasonable costs to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees which are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Except for monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D, monies collected from all other fees shall be transmitted to the state treasurer for deposit in the water quality fee fund established by section 49-210.

9. Adopt, modify, repeal and enforce other rules which are reasonably necessary to carry out the director's functions under this chapter.

10. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

11. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Prior to the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case by case basis, taking into account site conditions and operational factors.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as is reasonably necessary to ensure compliance with this chapter. The director or a department employee

may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, he shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3 or 3.1 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to the provisions of section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 8 of this section.

D. The director shall integrate all of the programs authorized in this section and such other programs affording water quality protection which are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

49-221. Water quality standards in general

A. The director shall adopt, by rule, water quality standards for all navigable waters and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses.

B. The director may adopt, by rule, water quality standards for waters of the state other than those described in subsection A of this section, including standards for the use of water pumped from an aquifer that does not meet the standards adopted pursuant to section 49-223, subsections A and B and that is put to a beneficial use other than drinking water. These standards may include standards for the use of water pumped as part of a remedial action. In adopting such standards, the director shall consider the economic, social and environmental costs and

benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

C. In setting standards pursuant to subsection A or B of this section, the director shall consider, but not be limited to, the following:

1. The protection of the public health and the environment.

2. The uses which have been made, are being made or with reasonable probability may be made of these waters.

3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.

4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.

5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.

6. Any unique physical, biological or chemical properties of the waters.

D. Water quality standards shall be expressed in terms of the uses to be protected and, if adequate information exists to do so, numerical limitations or parameters, in addition to any narrative standards which the director may deem appropriate.

E. The director may adopt by rule water quality standards for the direct reuse of reclaimed water. In establishing these standards the director shall consider the following:

1. The protection of public health and the environment.

2. The uses that are being made or may be made of the reclaimed water.

3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

F-3

ARIZONA GAME AND FISH DEPARTMENT (F-16-0501)
Title 12, Chapter 4, Article 5, Boating and Water Sports

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-3**

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

FROM: Matthew Rippentrop, Legal Intern

DATE: May 20, 2016

SUBJECT: **ARIZONA GAME AND FISH COMMISSION (F-16-0501)**
Title 12, Chapter 4, Article 5 Boating and Water Sports

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The Arizona Game and Fish Commission (Commission) establishes policy for the management, preservation, and harvest of wildlife. The Commission makes rules and regulations for managing, conserving, and protecting wildlife and fisheries resources, and safe and regulated watercraft and off-highway vehicle operations for the benefit of the citizens of Arizona.

A.A.C. Title 12, Chapter 4, Article 5 titled "Boating and Water Sports" contains 29 rules relating to watercraft registration, regulation, and safe usage.

Section Content and Subject Matter

R12-4-501 titled "Definitions" establishes definitions that assist in the understanding of unique terms used throughout the Article.

R12-4-502 titled "Application for Watercraft Registration" establishes watercraft registration application requirements.

R12-4-503 titled "Renewal of Watercraft Registration" establishes watercraft registration renewal requirements when the renewal is made in person, through the mail, or online.

R12-4-504 titled "Watercraft Fees; Penalty for Late Registration; Staggered Registration Schedule" establishes motorized watercraft registration, watercraft transfer, duplicate registration and decal, and dealer certificate of number fees, penalty for late registration, and a staggered schedule for the different types of registrations offered by the Commission.

R12-4-505 titled “Hull Identification Numbers” establishes Hull Identification Number (HIN) requirements in compliance with federal standards.

R12-4-506 titled “Invalidation of Watercraft Registration and Decals” establishes circumstances under which the Commission shall invalidate a watercraft registration and provide the authority to refuse to register a watercraft until the reason for the invalidity is addressed.

R12-4-507 titled “Transfer of Ownership of an Abandoned or Unreleased Watercraft” established the requirements for transferring ownership of an unreleased or abandoned watercraft.

R12-4-508 titled “New Watercraft Exchanges” establishes requirements for issuing a duplicate registration for a new watercraft that is replaced due to a defect by the seller.

R12-4-509 titled “Watercraft Agents” establishes watercraft agent application requirements and the authorization process for a dealer seeking a temporary certificate of number upon the sale of a new watercraft.

R12-4-510 titled “Refund of Fees Paid in Error” establishes the requirements necessary to obtain a refund when the watercraft owner erroneously paid those fees twice for the same watercraft, or sold the watercraft to another person prior to renewing the registration.

R12-4-511 titled “Personal Flotation Devices” establishes personal flotation device (PFD) categories and requirements specific to operator, passengers, and watercraft type.

R12-4-512 titled “Fire Extinguishers Required for Watercraft” establishes fire extinguisher requirements specific to the type or class of watercraft.

R12-4-513 titled “Watercraft Accident and Casualty Reports” establishes self-reporting requirements for watercraft operators involved in any collision, accident, or other casualty resulting in an injury, casualty, or property damage.

R12-4-514 titled “Liveries” establishes requirements for rental watercraft when the certificate number is retained on shore by the owner.

R12-4-515 titled “Display of Arizona Numbers and Registration Decals” establishes the necessary display of watercraft numbers and decals issued by the Commission in compliance with state statutory requirements.

R12-4-516 titled “Watercraft Sound Level Restriction” establishes sound level restrictions and testing requirements for the protection of human health and minimizing the annoyance of noise to the general public.

R12-4-517 titled “Watercraft Motor and Engine Restrictions” establishes engine restrictions for waters located in Arizona to protect the public and conserve aquatic resources.

R12-4-518 titled “Regattas” prescribes regulations for the issuance of permits for motor boat races, regattas, or other events.

R12-4-519 titled “Reciprocity” establishes the period of time during which a registration issued by another jurisdiction is valid for operating a watercraft after Arizona becomes the new state of principal use.

R12-4-520 titled “Arizona Uniform State Waterway Marking System” incorporates the U.S. Coast Guard’s uniform state waterway marking system.

R12-4-521 titled “Placing or Tampering With Regulatory Markers or Aids to Navigation” establishes prohibited activities involving regulatory markers, aids to navigation, or other waterway marking devices.

R12-4-522 titled “Establishment of Controlled-Use Markers” establishes requirements for persons requesting to establish, change, or remove controlled-use markers and the follow-up requirements.

R12-4-523 titled “Controlled Operation of Watercraft” establishes watercraft operational restrictions for waterways restricted by lawfully placed controlled use markers and their exceptions.

R12-4-524 titled “Water Skiing” establishes water ski observer requirements mirroring adjoining states California and Nevada, seeking to reduce regulatory inconsistencies that could lead to enforcement issues on shared waterways.

R12-4-525 titled “Revocation of Watercraft Certificate of Number, AZ Numbers, and Decals” establishes the revocation process for certificates of number and decals issued by the Commission.

R12-4-526 titled “Unlawful Mooring” establishes watercraft mooring restrictions, prohibitions, and exceptions.

R12-4-527 titled “Transfer of Ownership of a Towed Watercraft” establishes transfer of ownership requirements for a watercraft in possession of a towing company.

R12-4-528 titled “Watercraft Checkpoints” establishes checkpoint procedure for watercraft operators when directed to stop by a law enforcement officer.

R12-4-529 titled “Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal” establishes a Nonresident Boating Safety Infrastructure Fee (NBSIF) schedule and proof of payment procedure.

Year Each Rule was Last Amended or Newly Made

- June 16, 2015: Section 504
- January 1, 2014: Sections 501, 503, and 529
- July 1, 2013: Sections 502, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 519, 520, 521, 522, 523, 525, 526, 527, and 528
- January 10, 2012: Section 518
- May 24, 2011: Section 517
- February 2, 2008: Section 524

Proposed Action

The Commission indicates that it plans to amend all of the rules by December of 2017, with the exceptions of Sections 508, 512, 516, 517, 518, 519, 523, 525, and 528. The Commission anticipates requesting an exception to the rulemaking moratorium by June of 2016. Amendments to the remaining rules seek to update statutory references, incorporate public recommendation, update and establish fees, ban certain dangerous activities, and generally improve clarity, consistency, and compliance. Examples of specific changes for each of the rules are enumerated below:

Section 501: Update reference to 2013 nonresident boating safety infrastructure fee to be established in R12-4-529, update PFD language to reflect federal rule language, and amend "abandoned watercraft" to be consistent with changes proposed for R12-4-526.

Section 502: Establish signature requirements for watercraft owned by more than one person, business, or held in trust, and further require applicants for watercraft registration to complete and sign a residency statement.

Section 503: Allow individuals to obtain a duplicate registration online.

Section 504: The Commission plans to conduct a cost analysis to see if fees that have stood for 28 years need to be increased in compliance with A.R.S. § 5-328 and establish the late registration renewal penalty fee exemption does not apply to a person who chooses to renew the watercraft registration via the Department's online watercraft registration system.

Section 505: Clarify the rule by describing scenarios where the Commission may accept a bill of sale with a missing or nonconforming HIN.

Section 506: Amend to allow invalidation of dealer watercraft registration when the watercraft is used in violation of A.R.S. § 5-322(F).

Section 507: Amend to allow an agent to act on behalf of a lienholder when a watercraft is abandoned on a foreclosed property for the watercraft's removal.

Section 509: Amend to reflect changes made to U.S. Coast Guard regulations under 33 C.F.R. 187 "Vessel Identification System (VIS)."

Section 510: Amend to allow registration refunds under circumstances where a watercraft was registered and fee paid in error, as petitioned by a member of the public.

Section 511: Amend to address new PFD requirements for paddleboards as a result of a recent legal interpretation by the U.S. Coast Guard.

Section 513: Amend to replace “accident” with “incident” to reflect terminology used by the industry.

Section 514: Amend to address renting and leasing operations that do not include an operator.

Section 515: Amend to reference “moored or anchored” watercraft to increase consistency between the rule and controlling statute.

Section 520: Amend to incorporate the most recent version of 33 C.F.R. 62 to ensure compliance with A.R.S. § 5-316.

Section 521: Amend to include light regulations as addressed in 33 C.F.R. 62 for purposes of public safety.

Section 522: Amend rule language to improve general clarity.

Section 524: Amend to ban “teak surfing,” require observers for all persons being towed behind watercraft or riding a watercraft’s wake, and further require wake surfer to wear a PFD.

Section 526: Amend to address enforcement issues, allowing enforcement officials to take more timely action concerning abandoned or submerged watercraft by requiring a person to remove the watercraft within 72 hours of receiving a written or verbal notification and establish the owner is responsible for towing and storage fees.

Section 527: Amend to require towing companies to request owner or lienholder information within 15 days of possession of the watercraft and require towing companies to apply for a certificate of number for watercraft that are not removed from the towing company’s premise within 30 days of mailing notice to the owner or lienholder. Further, the Commission seeks to establish a $25 penalty fee for failure to comply with the 15 and 30-day time-frames.

Section 529: Amend to remove references and requirements relating to Arizona NBSIF Decals.

Summary of Reasons for Proposed Actions

The Commission believes the proposed amendments will ensure accurate statutory references, provide greater clarity, improve the accessibility of the Commission’s services, and address enforcement and compliance issues currently encountered with the rules.

Substantive or Procedural Concerns

None.

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

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

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

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

Yes. The Commission indicates the rules are effective in achieving their objectives, with the exceptions of Sections 514 and 516. Section 514 is limited in scope and lacks consequence as the rule only applies to those livery operations that voluntarily register as a business conducting watercraft for hire operations. Section 516 suffers from enforcement issues concerning abandoned watercraft response time for enforcement officers.

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

Yes. The Commission received criticism concerning Section 504 with a customer requesting a "non-use waiver" allowing a person to waive late registration fees for watercraft not in use. In interpreting A.R.S. § 5-321(L), the Commission believes a legislative amendment is required before the Department may implement a "non-use waiver" as suggested by the commenter.

Concerning Section 510, the Commission received a petition for a refund for a renewed registration fee paid in error. In response, the Commission plans to amend the rule to process refunds when the watercraft registration was renewed in error.

Concerning Section 517, the Commission received a petition to amend the rule to remove the 10 horsepower (hp) limitation and implement a "no wake" restriction instead. Law Enforcement and Fisheries Program staff were tasked with evaluating the requested amendments and ultimately decided not to amend the restriction based on a number of observations enumerated in the report.

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

Yes. The authorizing statutes for the Commission are set forth in A.R.S. §§ 5-302 providing "[t]his chapter [Chapter 3] applies to all watercraft operating on all of the waterways of this state, including that part of waters that is common to interstate boundaries and that is within the boundaries of this state" and 5-311(A)(1) calling on the Commission to "[m]ake rules and regulations required to carry out in the most effective manner all the provisions of this chapter." Implementing statutes are listed in the report.

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

Yes. The Commission indicates Section 501 could be made more consistent with 33 C.F.R. 175 amended in 2014, and A.R.S. § 5-327 amended in 2013. Section 502 could be made more consistent with the A.R.S. § 5-321(A) signing requirement and the A.R.S. § 5-301(13) definition of resident. Section 506 should reflect changes to Sections 502 and 514. Section 509 should reflect changes to A.R.S. § 5-321 amended in 2013.

Section 511 should reflect amendments to 33 C.F.R. 175 and a 2008 Coast Guard memorandum clarifying PFD requirements. Section 514 should reflect Coast Guard regulations on commercial, passenger-for-hire operations. Section 515 needs an A.R.S. § 5-322 citation correction. Section 521 should reflect 33 C.F.R. 62 use of light regulations allowing the Commission to address instances where lights are placed along a waterway.

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

Yes. The Department indicates all the rules are enforced as written. However, enforcement issues with the following Sections could be improved:

- Section 506: Registrations are being improperly used for purposes not authorized by R12-4-502(E).
- Section 507: Current enforcement issues exist concerning abandoned watercraft on foreclosed property.
- Section 514: Current issues exist with persons not providing appropriate documentation and equipment required in certain circumstances by A.R.S. § 5-371.
- Section 527: Enforcement issues exist relating to notification requirements under A.R.S. § 5-399(A).
- Section 529: Outdated Arizona NBSIF Decal enforcement requirements should be amended as they are no longer the most efficient option.

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

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

- Section 504: Rule language could be amended concerning late registration fee exemptions and registration renewal timeframes.
- Section 509: Language should reflect changes made to 33 C.F.R. 187.
- Section 511: Remove redundant language.
- Section 513: General updates to the language could make this rule clearer.
- Section 522: Could be amended to make the rule more accurate.
- Section 524: Changes could improve clarity to the public and minimize misunderstandings of devices regulated by the rule by expanding the list of regulated devices.
- Section 526: Conflicts with other jurisdictional requirements leads to some confusion. The rule should reflect other jurisdictional requirements.
- Section 527: The rule could be amended to make towing requirements more concise.

8. **Stringency of the Rules:**

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

Yes. Section 511 is more stringent by requiring children to wear PDF at all times while watercraft are underway, whereas federal requirements provide exceptions. Section 513 is more stringent by requiring an incident report for accidents exceeding $500 in property damage, as opposed to the federal requirement of a $2,000 minimum.

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

Yes. Section 511 has authority under A.R.S. § 5-331(C), providing a child shall "wear a… personal flotation device whenever the watercraft is underway." Section 513 has authority under A.R.S. § 5-349(C), providing any accident "involving property damage exceeding five hundred dollars, a report shall be submitted."

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

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

Yes. The Commission indicates Sections 502, 503, 507, 508, 509, 522, 527, and 529 require the issuance of a permit or license.

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

The Commission indicates all the Sections meet the general permit requirements of A.R.S. § 41-1037.

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

Yes. The Commission completed the proposed course of action in the previous five-year-review report with the exception of Sections 514 and 516. After further analysis, the Commission determined the proposed actions for both Sections was unnecessary.

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

Yes. The Commission proposes amendments to all the rules as discussed above, with the exception of Sections 508, 512, 516, 517, 518, 519, 523, 525, and 528.

Conclusion

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

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-3**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : May 20, 2016

SUBJECT: **ARIZONA GAME AND FISH COMMISSION (F-16-0501)**
Title 12, Chapter 4, Article 5, Boating and Water Sports

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

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

The economic, small business, and consumer impact statements (EISs) from the most recent rulemaking were available for the rules contained in the five-year-review report.

This five-year-review report addresses watercraft registration procedures, watercraft fees, and vessel identification and boating safety requirements.

Watercraft registration rules establish application, renewal and invalidation procedures for watercraft users. The rules also establish a staggered renewal scheduling process for watercraft registration. Historically, boaters have delayed renewing their watercraft registration until just before the beginning of boating season, causing high demand over a short period of time. The rules establish a late registration penalty fee to enforce the staggered renewal schedule and to distribute demand throughout the calendar year. On an annual basis, the Commission renews approximately 101,660 watercraft registrations. Of those registration renewals, 32% are processed through the Commission's online watercraft registration system.

Watercraft fee rules establish requirements necessary to obtain a refund of the watercraft registration renewal fee and the Nonresident Boating Safety Infrastructure Fee (NBSIF) when applicable. On an annual basis, the Commission issues approximately 50 refunds. Rules also establish a NBSIF schedule. The rule requires nonresident watercraft owners who establish Arizona as the state of principal operation to pay an additional boating safety infrastructure fee. On an annual basis, the Commission collects approximately $2,681,840 in revenue from the NBSIF.

Vessel identification requirement rules establish requirements for displaying watercraft numbers and registration decals issued by the Commission. These rules also establish Hull Identification Numbers (HIN) in compliance with C.F.R. 181. Approximately 140 inspections result in finding an obstructed or indecipherable HIN. Of those boats that are seized due to an altered HIN, approximately 20 are determined to be a stolen watercraft.

Boating safety rules establish Personal Floatation Device (PFD) and fire extinguisher category requirements. According to the U.S. Coast Guard, drowning was the reported cause of death in 78% of the 610 recreational boating fatalities in 2014 nationwide. Of those incidents, 84% of those who drowned were not wearing a PFD. The rules also establish self-reporting requirements for watercraft collision accidents.

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

The Commission states that the majority of rules appear to be effective in achieving their stated objectives and have resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by the Council on March 5, 2013.

The Commission anticipates requesting an exception to the rulemaking moratorium by June 2016 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by December 2017.

The Commission believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

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

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

4. Conclusion

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

THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT
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PHOENIX, AZ 85086-5000
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February 23, 2016

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

RE: Five-year Review Report for 12 A.A.C. 4, Article 5, Boating and Water Sports

Dear Ms Ong:

On January 15, 2016, the Arizona Game and Fish Commission adopted the enclosed five-year-review report for 12 A.A.C. 4, Article 5, Boating and Water Sports, for submission to the Council. The report is prepared in accordance with A.R.S. § 41-1056 and the rules and guidelines adopted by the Council. The established due date for the report is February 2016.

The Commission believes the report complies with the Council's requirements as stated under R1-6-301.

The Arizona Game and Fish Commission also certifies compliance with the requirements of A.R.S. § 41-1091. The Commission certifies the following:

1. The Department publishes an annual directory summarizing the subject matter of all currently applicable rules and substantive policy statements;
2. The Department maintains a copy of the directory and all substantive policy statements at the Arizona Game and Fish Department Headquarters, 5000 W. Carefree Highway, Phoenix, AZ 85086 and online at www.azgfd.gov;
3. The Department includes the notice specified under A.R.S. § 41-1091(B) on the first page of each substantive policy statement; and

4. The Department's directory, rules, substantive policy statements, and any other material incorporated by reference in the directory, rules or substantive policy statements are open to public inspection at the Department Headquarters, 5000 W. Carefree Highway, Phoenix, AZ.

If you require additional information concerning the report or its contents, please contact Celeste Cook at (623) 236-7390.

Please let us know if you require anything further.

Sincerely,

Larry D. Voyles

Arizona Game and Fish Commission
2016 Five-Year-Review Report

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 5. BOATING AND WATER SPORTS

Prepared for the
Governor's Regulatory Review Council

ARIZONA GAME AND FISH COMMISSION

12 A.A.C. 4, ARTICLE 5. BOATING AND WATER SPORTS

2016 FIVE-YEAR REVIEW REPORT

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REPORT: ARTICLE 5. BOATING AND WATER SPORTS

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (G.R.R.C.).

G.R.R.C. determines the review schedule. The Arizona Game and Fish Commission's rules listed under Article 5, Boating and Water Sports, are scheduled to be reviewed by February 2016.

The Arizona Game and Fish Department (Department) tasked a team of employees to review the rules contained within Article 5. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff as well as comments received from the public. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

The Department anticipates requesting an exception to the rulemaking moratorium by June 2016 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

With this report, the Department also certifies its compliance with the requirements of A.R.S. § 41-1091. The Department certifies the following:

1. The Department publishes an annual directory summarizing the subject matter of all currently applicable rules and substantive policy statements;
2. The Department maintains a copy of the directory and all substantive policy statements at the Arizona Game and Fish Department Headquarters, 5000 W. Carefree Highway, Phoenix, Arizona 85086;
3. The Department includes the notice specified under A.R.S. § 41-1091(B) on the first page of each substantive policy statement; and
4. The Department provides the directory, rules, substantive policy statements, and any other material incorporated by reference in the directory, rules or substantive policy statements. These documents are open to public inspection at the Department Headquarters, 5000 W. Carefree Highway, Phoenix, Arizona 85086.

R12-4-501. BOATING AND WATER SPORTS DEFINITIONS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

   Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
   Implementing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

2. **Objective of the rule, including the purpose for the existence of the rule.**

   The objective of the rule is to establish definitions that assist the regulated community and members of the public in understanding the unique terms used throughout 12 A.A.C. Chapter 4, Article 5. The rule was adopted to facilitate consistent interpretation of, and to prevent the regulated community from misinterpreting, the intent of Commission rules.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

   The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

   In 2013, A.R.S. § 5-327 was amended to authorize the Commission to assess a nonresident boating safety infrastructure fee for each watercraft registered in this state by a nonresident as defined in section 5-301. The Department proposes to amend the rule to reference the rule that establishes the nonresident boating safety infrastructure fee, R12-4-529.

   In 2014, 33 C.F.R. 175 was amended to define "wearable" and "throwable" Personal Flotation Devices (PFDs). A throwable PFD means a U.S. Coast Guard approved Type IV device for use on any watercraft such as, but

not limited to, a buoyant cushion, ring buoy, or horseshoe buoy. A wearable PFD means a U.S. Coast Guard approved Type I, Type II, Type III, or Type V device for use on any watercraft such as, but not limited to, an off-shore lifejacket, near-shore buoyant vest, special-use wearable device, or flotation aid. The Department proposes to amend the rule to revise the definition for "personal flotation device" and define "wearable" and "throwable" PFDs in order to maintain consistency between the rule and the corresponding federal regulation as required under A.R.S. § 5-311. In addition, the Department proposes to amend the definition of "abandoned watercraft" to reflect consistent time-frames on public lands and waterways and support the intended purpose of proposed changes made to R12-4-526.

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

   Enforcement of the rule manifests itself through proper administration. Enforcement is directed to a rule or an order in which a definition is used. It is not the term that is cited, but the violation. To the extent that the Department is aware, there have been no problems with enforcement. Providing definitions for the unique terms used in Article 5 assist the public, Department personnel, and members of law enforcement in understanding the contents and meaning of Article 5 rules.

6. **Clarity, conciseness, and understandability of the rule.**

   The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to transfer all definitions contained in other Article 5 rules to this rule; clarify definitions where applicable; define "junk watercraft" and "Nonresident Boating Safety Infrastructure Decal;" and remove the reference to "flat wake under A.R.S. § 5-350" from the definition of "no wake." The rule was also amended to reflect changes made to U.S. Coast Guard regulations regarding the state of principal operation. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the definitions for unique terms specific to rules contained within Article 5 that assist the public, Department personnel, and law enforcement in understanding the contents and meaning of Article 5 rules. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal regulation 33 C.F.R. 187 is applicable to the subject of the rule. 33 C.F.R. 187.303 establishes the terms a state must define in order to participate in the Vessel Identification System (VIS). The Department has determined the rule is not more stringent than the corresponding federal law.

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-501 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Reference the rule that establishes the nonresident boating safety infrastructure fee, R12-4-529, as A.R.S. § 5-327 was amended to authorize the Commission to assess a nonresident boating safety infrastructure fee for each watercraft registered in this state by a nonresident as defined in section 5-301.
- Revise the definition for "personal flotation device" and define "wearable" and "throwable" PFDs in order to maintain consistency between the rule and the corresponding federal regulation as required under A.R.S. § 5-311.
- Revise the definition of "abandoned watercraft" to reflect consistent time-frames on public lands and waterways and support the intended purpose of proposed changes made to R12-4-526.

R12-4-502. APPLICATION FOR WATERCRAFT REGISTRATION

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, 5-322, 5-326, and 5-327

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish watercraft registration application requirements. The rule was adopted to ensure the Department provides and maintains the necessary information required under 33 C.F.R. 187 Vessel Identification System (VIS), which prescribes the owner and vessel information requirements for States electing to participate in VIS. On an annual basis, the Department registers approximately 18,000 watercraft that are either new watercraft or new to this state.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

A.R.S. § 5-321(A) states, "the application shall be signed by the owner of the motorized watercraft…" The Department proposes to amend the rule to establish signature requirements for watercraft owned by more than one person, a business, or held in a trust. In addition, A.R.S. § 5-301(13) defines resident as a person who is domiciled in this state for at least six consecutive months immediately before the date of the application for a watercraft decal and who does not claim residency for any purpose in any other state or country. The Department proposes to amend the rule to require an applicant for a watercraft registration to complete and sign a residency statement.

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

The rule is enforced as written. However, the Department proposes to amend the rule to require the owner's signature on the release of interest to be acknowledged before a Notary Public or witnessed by a Department

employee when the person is registering a watercraft in Arizona for the first time, but is not listed as the owner on the current registration and the signature of the buyer or seller is in question. This typically occurs when the release of interest contains a printed signature or the signature on another document submitted along with the release of interest does not match the person's signature on the release of interest. The Department will attempt to verify the person's signature by reviewing related records. If no record exists or if it cannot be determined that the signature is valid, the Department will require the owner's signature on the release of interest to be acknowledged before a Notary Public or witnessed by a Department employee. This is necessary to ensure that the person signing the application or the release of interest has the authority to do so. The fraudulent or unauthorized transfer of watercraft has been a chronic problem for years and is increasing in frequency. The unauthorized transfer of watercraft requires law enforcement investigative intervention or civil court intervention to overcome, which could be avoided by signature verification. Unauthorized transfers occur approximately 10 to 12 times a year, but can involve hundreds of thousand dollars of property. In addition, the rule allows the Department to require an owner to present their watercraft for inspection when the information provided by the applicant is inaccurate. The Department also proposes to amend the rule to require the owner to present their watercraft for inspection when the applicant is unable to provide the required information. In addition, the Department is aware of instances where a watercraft dealer certificate of number is used by employees and/or family members of the dealership for personal recreational purposes, in violation of A.R.S. §§ 5-321(A) and 5-322(F). The Department proposes to amend the rule to state a watercraft dealer registration used in violation of A.R.S. § 5-322(F) may result in the invalidation of that watercraft dealer registration as authorized under R12-4-506.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the

rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to establish that only motorized watercraft are subject to registration; require an applicant to provide their mailing address; require the applicant's signature on the Statement of Fact form to be either witnessed or notarized; and repeal language requiring the owner of a commercial watercraft to provide proof of ad valorem property tax payment. The Commission anticipated requiring the applicant's signature on the Statement of Fact form to be either witnessed or notarized would impact persons regulated by the rule due to the time taken to go to a Department office or a notary, whichever is more convenient as determined by the applicant. In addition, a notary service fee may apply, however R2-12-1102 limits the notary fee to $2 per signature.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

    - Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
    - Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
    - Public Comment Period: October 5, 2012 through November 5, 2012
    - G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
    - Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the minimum requirements necessary to create a watercraft record for a watercraft. The information and documentation specified within the rule are necessary to sufficiently identify the owner of the watercraft and the watercraft itself. In addition, the inspection of a homemade watercraft is necessary to prevent the Department from registering a stolen watercraft and assigning a conforming hull identification number (when applicable). The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 187 is applicable to the subject of the rule. 33 C.F.R. 187 prescribes the minimum owner, vessel, and record information requirements for States electing to participate in VIS. The Department has determined the rule is not more stringent than the corresponding federal law.

Federal regulation 33 C.F.R. 174 is applicable to the subject of the rule. 33 C.F.R. 174 prescribes a standard numbering system for vessels applicable to States for approval of State numbering systems. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule complies with A.R.S. § 41-1037. The certificate of number described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-502 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Establish signature requirements for watercraft owned by more than one person, a business, or held in a trust.
- Require an applicant for a watercraft registration to complete and sign a residency statement.
- Require the owner's signature on the release of interest to be acknowledged before a Notary Public or witnessed by a Department employee when the person is registering a watercraft in Arizona for the first

time, but is not listed as the owner on the current registration and the signature of the buyer or seller is in question.

- Require the owner to present their watercraft for inspection when the applicant is unable to provide the required information.
- Establish a watercraft dealer registration used in violation of A.R.S. § 5-322(F) may result in the invalidation of that watercraft dealer registration as authorized under R12-4-506.

R12-4-503. RENEWAL OF WATERCRAFT REGISTRATION

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, 5-326, and 5-327

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish watercraft registration renewal requirements when the renewal is made in person, through the mail, or online. The rule was adopted to provide watercraft registration renewal requirements to the regulated community. On an annual basis, the Department renews approximately 101,660 watercraft registrations. Of those registration renewals, 32% are processed through the Department's online watercraft registration system.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation. While the rule requires watercraft owners to renew their watercraft registration before it expires, many watercraft owners wait until early spring or summer to renew their watercraft registration in conjunction with boating season, which results in a high volume of renewal requests in a short time span. To address this issue, the Department conducts outreach activities designed to encourage watercraft owners to become familiar with watercraft laws and registration requirements. Activities include sending renewal notices, providing watercraft registration renewal information on the Department's website, emailing newsletters, and issuing press releases.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to remove language regarding the mailing of the renewal notice; require the watercraft owner to renew a watercraft registration before it expires; remove language regarding the ability to register a watercraft by telephone; and remove language referencing the Department’s registration renewal time-frame. The Commission anticipated the

proposed amendments would have little or no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements an applicant must meet in order to obtain a watercraft registration renewal. The information specified within the rule is necessary to identify the owner of the watercraft and ensure the correct watercraft registration is renewed. Currently, a person may only obtain a duplicate watercraft registration by mail or in person at a Department office. A person who discovers they have misplaced their registration on a weekend or holiday cannot obtain a duplicate watercraft registration any sooner than the next business day. The Department proposes to allow a person to obtain a duplicate registration online via the Department's online watercraft registration system. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The registration renewal described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-503 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Establish a person to obtain a duplicate registration online via the Department's online watercraft registration system.

R12-4-504. WATERCRAFT FEES; PENALTY FOR LATE REGISTRATION; STAGGERED REGISTRATION SCHEDULE

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321(H), 5-321(K), and 5-321.01

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish motorized watercraft registration, watercraft transfer, duplicate registration and decal, and dealer certificate of number fees, penalty for late registration, and a staggered watercraft registration schedule. The rule was initially adopted to establish the late registration penalty fee and various staggered schedules for the different types of watercraft registrations offered by the Department. The

motorized watercraft registration, watercraft transfer, duplicate registration and decal, and dealer certificate of number fees were added to implement legislative amendments resulting from Laws 2013, 1st Regular Session, Ch. 197, Section 25 (Senate Bill 1223).

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

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

The Department is not aware of any problems with the enforcement of the rule. The Department recognizes that a watercraft is not a necessity and that a person can choose when to register and use their watercraft. While the rule requires watercraft owners to renew their watercraft registration before it expires and establishes a staggered registration schedule, many watercraft owners wait until early spring or summer to renew their watercraft registration in conjunction with boating season. This results in a high volume of renewal requests in a short time span. To address this issue, the Department sends renewal notices and conducts outreach activities designed to encourage watercraft owners to become familiar with watercraft laws and registration requirements, take a boating education class, and exercise safe boating practices.

The current watercraft fees have been in place for over 28 years; the resources the Department expends processing the following transactions is far greater than the revenue generated from these transactions: duplicate watercraft registrations ($2), duplicate decals ($2), watercraft transfers ($4), and abandoned/unreleased applications (no charge). Under A.R.S. § 5-323(1)(a), 65% of the watercraft registration revenue shall be used to administer and enforce this chapter, provide an information and education program relating to boating and boating safety and administer any aquatic invasive species program. Resources spent processing duplicate watercraft registrations, duplicate decals, watercraft transfers, and abandoned/unreleased applications in excess of revenues received for providing those services reduces the Department's ability to provide adequate law

enforcement patrol and support, reduces information and education program outreach relating to boating and boating safety and the aquatic invasive species program. The Department intends to conduct a costs analysis and evaluate whether or not these fees should be increased in compliance with A.R.S. § 5-328 which authorizes the Department to establish fees for watercraft registrations, nonresident boating safety infrastructure fees, watercraft transfers, duplicate certificates of number or annual decal, and dealer watercraft certificates of number provided the total amount of fees collected in any fiscal year may not exceed 50% or more than the amount appropriated from the watercraft licensing fund for fiscal year 2012-2013 (6.75 million dollars).

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. The Department waives the late registration renewal penalty fee when a watercraft registration expires on a Saturday, Sunday, or State holiday and provided the watercraft owner renews the watercraft registration in person or by mail before the close of business on the next working day. Because the Department's online watercraft registration system is accessible 24 hours a day (notwithstanding routine maintenance conducted during periods of low volume traffic), this exception does not apply to watercraft registrations that are renewed online. The Department proposes to amend the rule to establish the late registration renewal penalty fee exemption does not apply to a person who chooses to renew the watercraft registration via the Department's online watercraft registration system to make the rule more concise. The Department also proposes to amend the rule to specify the number of months of pro-ration to clarify the current watercraft registration process for the first renewal period and allow a watercraft registration renewal to occur up to six months before the current expiration of the watercraft for the convenience of the applicant.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

On June 15, 2015, the Department received one written criticism regarding the late registration penalty fee and registration periods. The customer asked the Department to implement a "non-use waiver" by which a person could attest that they have not used the watercraft and allow the Department to waive the late registration penalty fee. In addition, the customer suggested the Department offer a permanent registration for very small boats.

Agency Response: The requirements for the late registration penalty fee are prescribed under A.R.S. § 5-321(L), which states, "On renewal of any motorized watercraft registration that has not been renewed by the current expiration date, the department shall assess a penalty unless the watercraft ownership has been transferred and the watercraft *was not* registered subsequent to the expiration date. The commission shall establish the penalty by rule. If more than twelve months have lapsed since the expiration date of the last registration or renewal, the penalty and back fees are waived." A legislative amendment is required before the Department may implement a "non-use waiver" as suggested by the commenter. In addition, A.R.S. § 5-311 requires all boating and water sport rules to comply with U.S. Coast Guard regulations. Under 33 C.F.R. 174.27 Duration of certificate of number, a certificate of number shall not be valid for more than three years. The federal rule would have to be amended before the Department could implement a "permanent registration" as suggested by the commenter.

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.**

In 2015, the rulemaking moratorium was extended by way of Executive Order 2015-01. An exemption from Executive Order 2015-01 was provided for the last rulemaking by Ted Vogt, Chief of Operations in the Governor's office, in an email dated May 22, 2015. The Commission amended R12-4-504 to re-establish a watercraft transfer fee of $4, a duplicate certificate of number or annual decal fee of $2, and a dealer certificate of number fee of $2.50 in rule. The last rulemaking moved three fees that were historically included in statute into rule, using the exempt rulemaking authority granted to the Commission by the Legislature. These nominal fees are the same fees currently charged by the Department and have been in place for over 28 years. Therefore, the Commission determined the rulemaking would have no impact on the regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was

approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the motorized watercraft registration, watercraft transfer, duplicate registration and decal, and dealer certificate of number fees, penalty for late registration, and a staggered watercraft registration schedule in compliance with A.R.S. §§ 5-321 and 5-322. Watercraft registration renewal fees collected pursuant to A.R.S. § 5-321 are deposited in the watercraft registration fee clearing account and distributed as follows: 65% is deposited in the watercraft licensing fund which is used by the Department to provide informational and educational programs relating to boating and recreational boating law enforcement and to administer the Department's Aquatic Invasive Species Program; of the remaining 35%: 15% is distributed to the State Lake Improvement Fund and 85% is used for boating safety grants administered (Law Enforcement Boating Safety Fund). The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

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

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to

amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-504 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Establish the late registration renewal penalty fee exemption does not apply to a person who chooses to renew the watercraft registration via the Department's online watercraft registration system.
- Specify the number of months of pro-ration to clarify the current watercraft registration process for the first renewal period.
- Allow a watercraft registration renewal to occur up to six months before the current expiration of the watercraft for the convenience of the applicant.

R12-4-505. HULL IDENTIFICATION NUMBERS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5) and 5-321

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish Hull Identification Number (HIN) requirements in compliance with 33 C.F.R. 181. HINs are vital in establishing the identity of a watercraft for recall and warranty purposes, to aid in the recovery of stolen watercraft, and to research the chain of ownership of a watercraft. As a watercraft travels from state to state, the HIN is the unique identifier required under 33 C.F.R. 181. The rule was adopted to ensure compliance with U.S. Coast Guard vessel identification requirements. On an annual basis, the Department conducts approximately 1,900 inspections.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation. Approximately 140 inspections result in finding an obstructed or indecipherable HIN (e.g., the HIN is altered, covered with paint, gel coat, an after-market part, or other obstruction that obstructs the HIM or makes it indecipherable). Of those boats that are seized due to an altered HIN, approximately 20 are determined to be a stolen watercraft. Even though statistics indicate most altered HINs are not concealing a stolen watercraft, the employee or officer has a duty to declare the HIN altered and seize the watercraft until the watercraft's status may be verified.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, there are other instances that allow the Department to accept a bill of sale with a missing or nonconforming HIN, such as a homemade watercraft or a watercraft manufactured prior to November 1, 1972. The Department proposes to amend the rule to address those scenarios.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to require the HIN for all watercraft manufactured after November 1, 1972; require watercraft owners to ensure the HIN is fully visible and unobstructed for all watercraft manufactured after August 1, 1984; and require watercraft owners to certify they have permanently affixed the Department assigned HIN to their watercraft within 30 days after receiving the Department assigned HIN. The Commission anticipated requiring watercraft owners to ensure the hull identification number (HIN) is fully visible and unobstructed for all watercraft manufactured after August 1, 1984 could result in minimal to significant costs when a person is required to relocate a swim platform or remove gel coat; these costs were estimated to range from $200 to $5,000, depending on the size of the watercraft or location of the after-market accessory. The Commission determined requiring a watercraft owner to certify they permanently affixed the Department-assigned HIN to their watercraft is the least burdensome way to comply with amendments made to U.S. Coast Guard regulations.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting

- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

A Department employee or law enforcement officer may inspect watercraft at a Department facility for the purpose of registering the watercraft in Arizona or on the water to determine whether the watercraft is in compliance with registration requirements or a possible stolen watercraft. As part of the inspection, the employee or law enforcement officer must verify the watercraft's HIN. On an annual basis, the Department conducts approximately 1,900 inspections, of which approximately 140 inspections result in finding an obstructed or indecipherable HIN. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulations 33 C.F.R. 181 and 33 C.F.R. 187 are applicable to the subject of the rule. 33 C.F.R. 181 prescribes requirements for the certification of boats and associated equipment and identification of boats to which 46 U.S.C. applies and 33 C.F.R. 187 prescribes the minimum owner, vessel, and record information requirements for States electing to participate in the Vessel Identification System (VIS). The Department has determined the rule is not more stringent than the corresponding federal laws.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-505 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Clarify rule by describing scenarios where the Department may accept a bill of sale with a missing or nonconforming HIN.

R12-4-506. INVALIDATION OF WATERCRAFT REGISTRATION AND DECALS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, 5-326, 5-327, and 5-391(I)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the circumstances under which the Department shall invalidate a watercraft registration and provide the Department with the authority to refuse to register a watercraft until the reason for the invalidity is corrected or no longer exists. The rule was adopted to ensure compliance with U.S. Coast Guard certificate of number requirements. Invalidating the certificate of number when the applicant provided false or misleading information on the application or the certificate of number is used fraudulently ensures the integrity of the Department's watercraft registration system. When the proper fees or documentation have not been provided, invalidation of the watercraft registration also prevents a customer from renewing the registration or transferring ownership until the reason for invalidity has been corrected or no longer exists. For example: on an annual basis, the Department receives approximately 25 non-negotiable checks that were written for watercraft registration fees. By invalidating these registrations and preventing any future registrations, the Department is able to collect the fees due. On an annual basis, the Department invalidates approximately, 1,300 watercraft registrations and decals under this rule.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

However, the Department proposes to amend the rule to reflect changes made to R12-4-502 and R12-4-514. R12-4-502 was amended to state a watercraft dealer registration used in violation of A.R.S. § 5-322(F) may result in the invalidation of that watercraft dealer registration as authorized under R12-4-506. R12-4-514 was amended to address passenger for hire operations.

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

The rule is enforced as written; however the Department has found that dealer watercraft registrations are improperly being used for purposes that are not authorized by R12-4-502 (E). Specifically, the Department has discovered instances when the dealer registrations are being displayed by persons associated with a dealership, but are using the unregistered watercraft for personal recreation and not demonstrating the watercraft for a potential buyer as required by rule. In addition, persons renting, leasing or offering a watercraft for compensation that is not registered as a livery craft are avoiding the regulatory requirements necessary to ensure public safety. These acts circumvent paying the proper registration fee, facilitate the unlawful use of an unregistered watercraft on the waterways of the state and endanger the public. Currently the Department does not have any recourse when the dealer or personal-use certificates of number are being used contrary to rule. As a result of this finding, the Department proposes to amend the rule to allow invalidation of the dealer watercraft registration when the dealer registration is used fraudulently or contrary to existing rule or the watercraft registration is for personal use and not registered as a livery craft.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated when the rule was last adopted. The rule was amended to correct statutory references and reflect amendments made to U.S. Coast Guard regulations regarding the state of principal operation. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community because the proposed amendments only target fraudulent or unauthorized use of watercraft registrations.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

    - Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
    - Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
    - Public Comment Period: October 5, 2012 through November 5, 2012
    - G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
    - Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the circumstances resulting in the invalidation of a watercraft registration and ensures the registration will remain invalid until the reason for the invalidity is corrected or no longer exists. On an annual basis, the Department invalidates approximately, 1,300 watercraft registrations and decals under this rule. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173.77 establishes that a certificate of number becomes invalid if the application contains false information or fees for the issuance of the certificate of number are not paid. A certificate of number is also invalid 60 days after the day the watercraft is no longer principally operated in the State where the certificate of number was issued or the person whose name appears on the certificate of number involuntarily loses their interest in the numbered watercraft by legal process. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-506 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Establish a watercraft dealer registration used in violation of A.R.S. § 5-322(F) may result in the invalidation of that watercraft dealer registration.

R12-4-507. TRANSFER OF OWNERSHIP OF AN ABANDONED OR UNRELEASED WATERCRAFT

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(1) and 5-311(A)(5)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements for transferring ownership of an unreleased or abandoned watercraft. Under R12-4-501, "abandoned watercraft" means any watercraft that has remained: on private property without the consent of the private property owner; unattended for more than 48 hours on a highway, public street, or other public property; unattended for more than 72 hours on state or federal lands; or public waterways unless in a designated moorage or anchorage area. When a watercraft is abandoned on private property, it often falls upon the property owner to take the necessary steps to resolve the issue. Abandoned watercrafts are unsightly and pose potential threats to navigation and the environment through the discharge of oil and other pollutants. The Department needs to dispose of abandoned or derelict boats in the most efficient, expeditious and cost effective manner. Under R12-4-501, "unreleased watercraft" means a watercraft for which there is no written release of interest from the registered owner. This occurs when a person sells a watercraft without proper documentation, such as when a watercraft is sold and the new owner never registers it. The rule was adopted to provide the regulated community with an efficient manner in which to properly dispose of abandoned/unreleased watercraft that includes: determination of abandonment; determination of ownership; a notice of intent to sell/waiver of rights process with an appropriate waiting period, determination of disposition, and transfer of ownership, when warranted. If at any time, the Department finds a person who has a lawful interest in the watercraft, the abandoned watercraft process is stopped.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

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

The rule is enforced as written; however the Department is aware of issues involving watercraft abandoned on foreclosed property. Often, a financial institution will contract with a company for the removal of personal effects left on the foreclosed property. Currently, the rule only allows the property owner to submit an abandoned watercraft application. To address this scenario, the Department proposes to amend the rule to allow an agent to act on behalf of the lienholder when a watercraft is abandoned on foreclosed real property.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to reflect current Department processes, comply with statutory requirements, and provide a mechanism that allows a government agency to dispose of junk watercraft. The Commission anticipated government agencies and the Department would benefit from a rulemaking that allows a government agency to dispose of junk watercraft without having to assume ownership. On an annual basis, the Department issues approximately five authorizations to dispose of junk watercraft to government agencies using this new process. The Commission anticipated the regulated community would benefit from a rule that fully communicates the Department's abandoned/unreleased watercraft process.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements that both the Department and the applicant must follow when processing an abandoned or unreleased watercraft application. The Department processes approximately 560 abandoned/unreleased watercraft applications annually. The requirements in place are designed to prevent the transfer of ownership of stolen watercraft or a watercraft that was not truly abandoned and mirror the requirements prescribed under A.R.S. §§ 5-399.01 and 5-399.02. The rule also provides a government official acting within the scope of their duties with a mechanism to dispose of junk watercraft left on state or federal lands or waterways. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule complies with A.R.S. § 41-1037. The certificate of number described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-507 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Allow an agent to act on behalf of the lienholder when a watercraft is abandoned on foreclosed real property.

R12-4-508. NEW WATERCRAFT EXCHANGES

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, and 5-322

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements for issuing a duplicate registration for a new watercraft that is replaced due to a defect by the seller within 30 days of the purchase. The rule was adopted to ensure a person whose watercraft is replaced by the dealership does not pay a second registration fee. On an annual basis, the Department processes approximately two watercraft exchanges.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

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

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. **Clarity, conciseness, and understandability of the rule.**

   The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with

Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the requirements a watercraft owner must follow when requesting a replacement registration for new watercraft that is replaced by the dealer. The requirements for replacing a registration are significantly less burdensome than those applicable to the registration application process, which is the only other available alternative. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

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

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule complies with A.R.S. § 41-1037. The authorization described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action.

R12-4-509. WATERCRAFT AGENTS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, 5-326, and 5-327

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish watercraft agent application requirements and the authorization process for a dealer seeking to issue a 30-day temporary certificate of number upon the sale of a new watercraft. The rule establishes watercraft agent application, inventory, and reporting requirements and the appropriate auditing and tracking mechanisms necessary to ensure compliance with applicable statutory requirements. The rule was adopted to allow a watercraft dealer to issue a 30 day temporary certificate of number immediately upon sale so the customer may enjoy the use of their new watercraft. On an annual basis, the Department authorizes approximately 40 watercraft agents to issue temporary certificates of number, who in turn issue approximately 1,200 temporary certificates of number each year.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

In 2013, A.R.S. § 5-321 was amended to authorize the Commission to establish watercraft registration fees for each motorized watercraft requiring numbering in this state. The Department proposes to amend the rule to reference the rule that establishes the dealer certificate of number fee.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. However, the Department proposes to amend the application requirements to reflect current watercraft registration application requirements and increase consistency between Article 5 rules.

6. **Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to comply with changes made to U.S. Coast Guard regulations under 33 C.F.R. 187 Vessel Identification System (VIS), which prescribes the owner and vessel information requirements for States electing to participate in VIS.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to correct statutory references, ensure compliance with A.R.S. § 5-327, allow a watercraft dealer to submit the required fees electronically, and remove language referencing the repealed watercraft license tax. The Department implemented an electronic funds transfer process by which an authorized watercraft agent can submit statutorily required watercraft registration fees. The Department holds that the benefits of the electronic payment process outweigh any associated costs. The Commission anticipated the amendments would make the rule more concise and less burdensome.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

    - Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
    - Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
    - Public Comment Period: October 5, 2012 through November 5, 2012
    - G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
    - Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the**

rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes watercraft agent application requirements and the authorization process for dealers seeking to issue a 30-day temporary certificate of number upon the sale of a new watercraft. The rule was adopted to allow a watercraft dealer to issue a 30-day temporary certificate of number immediately upon sale so a customer may enjoy the use of their new watercraft. The rule establishes watercraft agent application, inventory, and reporting requirements and the appropriate auditing and tracking mechanisms necessary to ensure watercraft agents are in compliance with applicable statutory requirements. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The authorization described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-509 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Reference the rule that establishes the dealer certificate of number fee.

R12-4-510. REFUND OF FEES PAID IN ERROR

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. § 5-311(A)(5)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements necessary to obtain a refund watercraft registration renewal fee and Nonresident Boating Safety Infrastructure fee, when applicable, when the watercraft owner erroneously paid those fees twice for the same watercraft or sold the watercraft to another person prior to renewing the registration. The rule was adopted to provide the regulated community with an efficient manner in which to obtain a refund for watercraft registration renewal fees paid in error. On an annual basis, the Department issues approximately 50 refunds under this rule.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   At the January Commission meeting, Karen Brogdon petitioned the Commission for a refund of her watercraft registration fee; Ms Brogdon stated that she had renewed her watercraft registration in error. The current rule allows the Department to process a refund when the person renews a registration for a watercraft they no longer own or pays the watercraft registration fee twice. In this case, the woman accidentally renewed the registration for a watercraft she still owned, but did not want to register. The Commission directed the Department to consider to amend the rule to allow for a refund under these circumstances when pursuing rulemaking.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to increase consistency between rules within Article 5. The Commission anticipated the proposed amendment would have little or no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    Not applicable, the Department did not indicate a course of action for the rule in the previous five-year review report.

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the**

rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes requirements necessary to obtain a refund when the watercraft owner erroneously paid those fees twice for the same watercraft or sold the watercraft to another person prior to renewing the registration. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-510 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Enable the Department to process a refund when the person renews a watercraft registration in error.

R12-4-511. PERSONAL FLOTATION DEVICES

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-331, and 5-350(A)

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish personal flotation device (PFD) category and type requirements specific to the operator, each passenger, and watercraft type. The rule was adopted to establish PFD category and type requirements in compliance with A.R.S. § 5-331 and U.S. Coast Guard regulations as required under A.R.S. § 5-311.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

In 2014, 33 C.F.R. 175 was amended to define "wearable" and "throwable" PFDs. A throwable PFD means a U.S. Coast Guard approved Type IV device for use on any watercraft such as, but not limited to, a buoyant cushion, ring buoy, or horseshoe buoy. A wearable PFD means a U.S. Coast Guard approved Type I, Type II, Type III, or Type V device for use on any watercraft such as, but not limited to, an off-shore lifejacket, near-shore buoyant vest, special-use wearable device, or flotation aid. The Department proposes to amend the rule to reflect changes made to U.S. Coast Guard regulation as required under A.R.S. § 5-311.

In 2008, the U.S. Coast Guard issued a memorandum in response to an inquiry from the Director of the Oregon Marine Board asking whether or not a paddleboard is considered to be a "vessel" for purposes of navigation, accident reporting, safety equipment (i.e. PFDs), and carriage requirements. The memorandum states the U.S. Coast Guard's legal determination is, "when beyond the narrow limits of a swimming, surfing, or bathing area, the device known as a "paddleboard" is a vessel under 46 C.F.R. § 2101 and is subject to U.S. Coast Guard regulations, unless specifically exempted." While the rule does not specify a person operating a paddleboard is required to wear a PFD, members of the public are still required to comply with U.S. Coast Guard regulations.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation. Compliance with PFD laws and rules is important because, according to the U.S. Coast Guard, drowning was the reported cause of death in 78% of the 610 recreational boating fatalities in 2014 nationwide. Of those incidents, 84% of those who drowned were not wearing a PFD.

6. **Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to remove redundant language to make the rule more concise.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the proposed amendments would have no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes PFD category and type requirements specific to the operator, each passenger, and watercraft type as required under A.R.S. §§ 5-331 and 5-311. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal regulation 33 C.F.R. 175 is applicable to the subject of the rule. 33 C.F.R. 175 establishes federal PFD regulations apply to all recreational vessels propelled or controlled by machinery, sails, oars, paddles, poles, or other vessels, to include defining "personal flotation device" and "PFD" prescribing the circumstances under which a PFD is required, specifications for size, fit, access, and serviceable condition. 33 C.F.R. 175.13(c)

states, "No person may operate a recreational vessel under way with any child under 13 years old aboard unless each such child is either wearing an appropriate PFD approved by the U.S. Coast Guard or is below decks or in an enclosed cabin." The Department has determined the rule is more stringent than the corresponding federal law in requiring a child who is on board a watercraft and is twelve years of age or under to wear a PFD whenever the watercraft is underway. However, A.R.S. § 5-331 (C) provides statutory authority to exceed the requirements of federal law and states, "A child twelve years of age or under on board a watercraft shall wear a United States coast guard approved type I, II or III personal flotation device whenever the watercraft is underway."

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-511 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Reflect changes made to U.S. Coast Guard regulation as required under A.R.S. § 5-311.

R12-4-512. FIRE EXTINGUISHERS REQUIRED FOR WATERCRAFT

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(2), 5-311(A)(5), and 5-332

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish fire extinguisher requirements specific to the type or class of watercraft. A.R.S. § 5-332 requires all watercraft fueled with volatile liquid to have aboard a U.S. Coast Guard-approved fire extinguisher that is available for immediate use, unless exempt. In addition, watercraft over twenty-six feet

in length shall have aboard such fire extinguishers as may be prescribed or approved by the regulations of the U.S. Coast Guard. This rule was adopted to prescribe requirements and exemptions for the possession of fire extinguishers to ensure compliance with U.S. Coast Guard regulations, with safety as the first concern.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 46 C.F.R. Part 25, which is relevant to these rules because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. The only concern is the phrase "readily accessible and available for immediate use." Though this term is malleable and gives greater discretion to law enforcement officers to determine whether or not a person is in compliance with the law, it might not generally be understood by the public and persons may exploit the fact that the phrase is not definitive to avoid their responsibility for ensuring their watercraft is properly equipped with the required safety equipment. For this reason, the Department does not feel that it is advisable, or perhaps even possible, to further clarify the adjectival phrase "readily accessible and available for immediate use." It is recommended the Information,

Education, and Recreation Branch continue to conduct outreach activities designed to encourage watercraft owners to become familiar with watercraft laws and registration requirements, take a boating education class, and exercise safe boating practices.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to clarify fire extinguisher access and use requirements prescribed under A.R.S. § 5-332. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes fire extinguisher requirements specific to the type or class of watercraft. A.R.S. § 5-332 requires all watercraft fueled with volatile liquid shall have aboard a U.S. Coast Guard-approved fire extinguisher that is available for immediate use, unless exempt. In addition, watercraft over twenty-six feet in length shall have aboard such fire extinguishers as may be prescribed or approved by the regulations of the U.S. Coast Guard. The rule was adopted to prescribe requirements and exemptions for the possession of fire extinguishers to ensure compliance with state statute and regulations of the U.S. Coast Guard, with safety as the first concern. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 46 C.F.R. Part 25 is applicable to the subject of the rule. 46 C.F.R. Part 25 prescribes fire extinguisher classifications, the number and type of fire extinguishers required for specific vessels, locations for storage, inspection, and condition requirements. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action.

R12-4-513. WATERCRAFT ACCIDENT AND CASUALTY REPORTS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

   Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
   Implementing statute: A.R.S. §§ 5-311(A)(5), 5-311(A)(7), and 5-349

2. **Objective of the rule, including the purpose for the existence of the rule.**

   The objective of the rule is to establish self-reporting requirements for watercraft operators involved in any collision, accident, or other casualty resulting in an injury, casualty, or property damage. The rule was adopted to ensure compliance with U.S. Coast Guard accident and casualty reporting requirements. On an annual basis, the Department submits 105 watercraft accident and casualty reports to the U.S. Coast Guard.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

   The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to replace references to "accident" with "incident" to reflect terminology used by the industry.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to replace form specific requirements with general requirements, such as "Operator's personal information" instead of "Operator's name, address, date of birth, gender, and telephone number," clarify when and where the report should be submitted, and to remove duplicative language. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The objective of the rule is to establish self-reporting requirements for watercraft operators involved in any collision, accident, or other casualty resulting in an injury, casualty, or property damage. The rule was adopted to ensure compliance with U.S. Coast Guard accident and casualty reporting requirements. The form is furnished by the Department and is given to the persons involved by the officer who initially responded to the incident. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173.55 establishes the operator of a vessel shall submit the casualty or accident report prescribed in § 173.57 to the reporting authority prescribed in § 173.59 when, as a result of an occurrence that involves the vessel or its equipment damage to vessels and other property totals $2,000 or …" The Department has determined the rule is more stringent than the corresponding federal law. However, A.R.S. § 5-349(C) provides statutory authority to exceed the requirements of federal law and states, "For every other collision, accident or other casualty involving property damage exceeding five hundred dollars, a report shall be submitted within five days after the incident by the operator or owner of the watercraft involved."

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-513 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Replace references to "accident" with "incident" to reflect terminology used by the industry.

R12-4-514. LIVERIES

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5) and 5-371

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of this rule is to establish identification requirements for rental watercraft when the certificate of number is retained on shore by the owner. The rule was adopted to ensure compliance with A.R.S. §§ 5-321(F), 5-371 and 33 C.F.R. 173 certificate of number requirements.

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

The rule appears to be effective in achieving the objective stated above, although the objective is limited in scope as it is incumbent on the person operating livery to voluntarily register as a livery. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable, but lacks consequence and currently only applies to those livery operations that voluntarily register as a business conducting watercraft for hire operations. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations. U.S. Coast Guard regulations address commercial, passenger for hire operations in which a livery offers a watercraft with an operator for hire or lease operations. The Department proposes to amend the rule to address renting or leasing operations that do not include an operator.

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

   The rule is enforced as written; however, the Department is aware of persons who offer to rent or lease personal watercraft that are registered for personal use without providing the documentation and equipment required under A.R.S. § 5-371. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. **Clarity, conciseness, and understandability of the rule.**

   The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received; however, verbal communications have been provided by law enforcement agencies encountering rented, personally owned, watercraft.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the**

rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    The Department did not complete the course of action indicated in the previous five-year review report for R12-4-514 which indicated the rule would be amended to reference the aquatic invasive species program authorized under Laws 2009, First Regular Session, Chapter 77. Further analysis determined the amendment was unnecessary as livery operators are subject to the aquatic invasive species rules which became effective January 10, 2012. Under R12-4-1101, "Owner" means a person who claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

    The rule establishes identification requirements for rental watercraft when the certificate of number is retained on shore by the owner. The rule ensures compliance with A.R.S. §§ 5-321(F), 5-371 and 33 C.F.R. 173 certificate of number requirements. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule, while maintaining compliance with U.S. Coast Guard regulations and ensuring watercraft are properly registered and equipped.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal regulation 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173.21 establishes that no person may use a vessel subject to numbering requirements unless it has a number issued on a certificate of number by the issuing authority in the State of principal operation and the number is displayed on the vessel or, if leased or rented for noncommercial operation, a copy of the lease or rental agreement containing the vessel number that appears on the certificate of number and the period of time for which the vessel is leased or rented. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-514 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Address rental or leasing operations that do not include an operator.

R12-4-515. DISPLAY OF AZ NUMBERS AND REGISTRATION DECALS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 311(A)(5), 5-321(A), 5-322, 5-326, and 5-327

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements for the display of watercraft numbers and registration decals issued by the Department. A.R.S. § 5-321(E) requires the Department issue a watercraft registration applicant "two current annual decals and a certificate of number stating the number issued to the watercraft and the name and address of the owner. The owner shall display the assigned number and the current annual decals

in such a manner as may be prescribed by rules of the Commission." The Department-issued numbers and decals are the means of identifying a watercraft and its registration status. The rule was adopted to ensure compliance with 33 C.F.R. 174 State numbering systems requirements.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations. However, the Department proposes to correct a citation error in subsection (A), A.R.S. § 3-322 should be A.R.S. § 5-322.

A.R.S. § 5-322(A) requires all motorized watercraft whether underway, moored or anchored on the waters within the boundaries of the state to be numbered in accordance with A.R.S. Title 5, Chapter 3 or rules of the Commission in accordance with the federally approved numbering system. The Department proposes to amend the rule to reference the "moored or anchored" to increase consistency between statute and rule.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to correct statutory references, clarify the rule, and ensure consistency between rules within Article 5. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

    - Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
    - Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
    - Public Comment Period: October 5, 2012 through November 5, 2012

- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The objective of the rule is to establish requirements for the display of watercraft numbers and registration decals issued by the Department. A.R.S. § 5-321(E) requires the Department issue a watercraft registration applicant "two current annual decals and a certificate of number stating the number issued to the watercraft and the name and address of the owner." The rule establishes AZ number and registration decal display requirements sufficient to ensure law enforcement can easily view the information and determine whether a watercraft is lawfully registered. The information required is sufficient to identity the watercraft and state of registration. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 173 and 33 C.F.R. 174 are applicable to the subject of the rule. 33 C.F.R. 173 prescribes requirements for numbering vessels and 33 C.F.R. 174 prescribes a standard numbering system for vessels. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-515 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Reference "moored or anchored" to increase consistency between statute and rule.

R12-4-516. WATERCRAFT SOUND LEVEL RESTRICTION

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

   Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
   Implementing statute: A.R.S. §§ 5-311(A)(2), 5-311(A)(3), 5-311(A)(5), and 5-336

2. **Objective of the rule, including the purpose for the existence of the rule.**

   The rule establishes sound level restrictions and testing requirements with the intent of protecting human health and minimizing the annoyance of noise to the general public, in compliance with the authority given to each state under the Noise Control Act of 1972 and Quiet Communities Act of 1978. The rule was adopted to ensure compliance with A.R.S. § 5-336, which is intended to prevent excessive or unusual noise.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

   The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4, and 42 U.S.C. 65, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can

check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to comply with requirements prescribed under A.R.S. § 41-1028(D) and demonstrate the Department's compliance with federal copyright laws. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes sound level restrictions and testing requirements with the intent of protecting human health and minimizing the annoyance of noise to the general public, in compliance with the authority given to each state under the Noise Control Act of 1972 and Quiet Communities Act of 1978, which states federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment and strives to promote the development of effective state and local noise control programs. The sound level restrictions and testing requirements are either the same as or slightly more restrictive than those in place in other Western states. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 42 U.S.C. 65 is applicable to the subject of the rule. 42 U.S.C. 65 establishes federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action

R12-4-517. WATERCRAFT MOTOR AND ENGINE RESTRICTIONS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(2) and 5-311(A)(3)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish watercraft motor and engine restrictions for waters located in this State to protect the public and conserve aquatic resources. The rule was adopted to restrict the use of watercraft and boat engines on certain bodies of water in order to protect the public and the environment. Powerboats can have a deleterious impact on certain lakes because their wake and resultant wave action can erode fragile shorelines; gasoline powered motors produce petroleum by-product emissions that can pollute the water; propellers can stir up sediment containing chemical properties that can kill aquatic wildlife; noise pollution can disturb the public and wildlife. In addition, some lakes are simply too small to safely operate a powerboat and others have nesting waterfowl populations or other wildlife habitat that must be considered.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

On August 13, 2013, the Department received a petition requesting that subsection (B) of the rule be amended to remove the 10 horsepower (hp) limitation on electric and gas powered motors and implement a "no wake" restriction instead. The petition was placed on the December 6, 2013 Commission agenda. The petitioner was present and addressed the Commission in support of his petition. The Commission asked the petitioner if he would be willing to withdraw his petition, so that the Commission did not have to deny it, but rather could vote to direct the Department to add the petitioner's request to the regular rulemaking cycle for evaluation and consideration. The petitioner agreed to withdraw his petition and stated that he hopes to see his proposed amendment incorporated into the rule.

The Apperson Petition requested a change that, if implemented, would have multiple access and cross-program implications. Consequently, Law Enforcement and Fisheries Program staff were tasked with evaluating the requested amendments. After careful consideration and analysis, the Department recommends not amending the rule to remove the 10 hp limitation on electric and gas powered motors and implement a "no wake" restriction

based on the following observations:

- The lakes listed under this subsection are all considered to be angling lakes. If the rule were amended as suggested, in theory, these lakes would see a notable increase in day-cruising by watercraft with larger motors.
- A clear-cut hp rating is more practical for law enforcement officers to enforce than the more subjective wakeless speed.
- A wakeless speed restriction would make some of the larger lakes less safe because it would prevent boaters from being able to rapidly return to a boat ramp in the case of inclement weather, lightning, high winds, etc.
- A wakeless speed restriction will result in a sweeping change to all 29 lakes and will impact all lake users including boat fisherman, land management agencies, and marina operators. Addressing uncontrolled wakes is more readily tackled by enforcing the provisions of A.R.S. § 5-343. Currently, the Department and 15 other jurisdictions practice enforcement efforts that directly address the small number of offending boat operators, without enacting a sweeping change that will impact all boaters and marina operators.
- Noise issues on small mountain waterways are a valid concern for all persons who recreate at these lakes, however, the Department believes the current noise levels associated with the 10 hp motors are acceptable.
- While some of the newer 4-stroke outboard motors may make less noise than a 10hp motor, removing hp restriction would not limit the use of these lakes to watercraft with a newer motor, which means a person could lawfully idle a 400 hp jet boat across these lakes.
- Larger horsepower engines do not run efficiently at idol speeds, which may result in excess exhaust emissions into the water and air at the 29 affected lakes.
- Bald eagles are known to nest around some of the small lakes. The Department addresses the potential noise impacts to nesting eagles by implementing small area closures. Allowing larger motors on the lakes would likely result in large area closures around these nests, thus increasing the impact on boaters and anglers during bald eagle nesting seasons.
- Many of these lakes are shallow and the launch ramps are not designed to accommodate the sizes, weights, and launching drafts necessary for the safe launching of larger boats. The requested amendments would allow persons with larger, heavier watercraft to potentially exceed the designed weight limit for dirt and gravel launch ramps, which is likely to damage these access structures. This would result in added costs to the agency responsible for maintaining the lake and possibly increase the number of general liability claims.
- Law enforcements officers are given the discretion to manage instances where a trolling battery fails or watercraft with gasoline motors need trailering.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated when the rule was last adopted. The rule was amended to allow a person to operate non-motorized watercraft, such as a canoe, inflatable raft, or kayak provided the person also possesses a valid use permit issued by the U.S. Forest Service. The amended rule does not exempt a person from complying with all applicable requirements imposed by federal or state laws, rules, regulations, or orders. The Commission anticipated the proposed amendment would promote the safe and proper use of watercraft by Arizona youth, which should contribute to increased participation in outdoor recreational activities by these youth and their families.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

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

The Department did not complete the course of action indicated in the previous five-year review report for R12-4-517 which indicated the Cibola Lake would be added to the list of waters that allow the use of watercraft powered by an electric motor, only. Upon further analysis, the Department determined the lake should remain in its current unrestricted status.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule was established to prescribe watercraft motor and engine restrictions for waters located in this State in an effort to protect the public and conserve aquatic resources. The rule was adopted to restrict the use of watercraft and boat engines on certain bodies of water in order to protect the public and the environment. Powerboats can have a deleterious impact on certain lakes because their wake and resultant wave action can erode fragile shorelines; gasoline powered motors produce petroleum by-product emissions that can pollute the water; propellers can stir up sediment containing chemical properties that can kill aquatic wildlife; noise pollution can disturb the public and wildlife. In addition, some lakes are simply too small to safely operate a powerboat and others have nesting waterfowl populations or other wildlife habitat that require consideration. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

R12-4-518. REGATTAS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321(A)(2), 5-332(C), and 5-322(F)

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to prescribe regulations for the issuance of permits for motor boat races, regattas, or other events, as authorized under A.R.S. § 5-311(A)(6). The Commission has chosen not to exercise its authority under the statute and does not issue permits for such events outside of the Colorado River. Therefore, these events may be held without obtaining a permit from the Department. The U.S. Coast Guard, however, does require and issue permits for events held on the Colorado River. The purpose of this rule is to ensure the Department's has the ability to enforce the requirements of the U.S. Coast Guard permits.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review,

Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. **Clarity, conciseness, and understandability of the rule.**

   The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to reference the aquatic invasive species program under Article 11. The Commission believes the unrestricted spread of quagga and zebra mussels would have far-reaching financial impacts that can affect virtually every resident of the state. The Commission anticipated the amendments would have little or no financial effect on most watercraft owners and operators, but costs could range from no cost by simply pulling the drain plug and allowing the watercraft to dry to $2,000 when decontaminating a watercraft that was moored over a lengthy period of time in an infested waterbody.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 17 A.A.R. 1160, June 10, 2011
- Notice of Proposed Rulemaking: 17 A.A.R. 1154, June 10, 2011
- Public Comment Period: June 10, 2011 through July 10, 2011
- G.R.R.C. approved the Notice of Final Rulemaking at the January 10, 2012 Council Meeting
- Notice of Final Rulemaking: 18 A.A.R. 194, January 27, 2012

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule prescribes requirements for regattas, as authorized under A.R.S. § 5-311(A)(6). The Commission chose not to exercise its authority under the statute and does not issue permits for such events outside of the Colorado

River. Therefore, these events may be held without obtaining a permit from the Department. The U.S. Coast Guard, however, does require and issue permits for events held on the Colorado River. The purpose of this rule is to ensure the Department's has the ability to enforce the requirements of the U.S. Coast Guard permits. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

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

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action.

R12-4-519. RECIPROCITY

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321(A)(2), 5-322(C), and 5-322(F)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the period of time during which a registration issued by another jurisdiction is valid for operating a watercraft after Arizona becomes the new state of principal use. The rule was adopted to implement the authority prescribed under A.R.S. § 5-322(C), which states, "All owners of motorized watercraft when in the course of interstate operation displaying a current and valid number issued under an approved federal numbering system of the United States coast guard, a state, the Commonwealth of

Puerto Rico, the Virgin Islands, Guam or the District of Columbia shall register such watercraft with the department before the expiration of the reciprocity period prescribed by rules of the commission."

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

   The rule is effective in achieving its objective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to these rules because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. **Clarity, conciseness, and understandability of the rule.**

   The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to comply with U.S. Coast Guard regulations, which were amended to reference "state of principal operation" instead of "state of principal use." The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

    - Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
    - Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
    - Public Comment Period: October 5, 2012 through November 5, 2012
    - G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
    - Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the period of time during which a registration issued by another jurisdiction is valid for operating a watercraft after Arizona becomes the new state of principal use. The rule was adopted to implement the authority prescribed under A.R.S. § 5-322(E). The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173 establishes a vessel numbered in a State is deemed in compliance with the numbering system when operated temporarily in another state; and a person moving to another state may operate their vessel with the other state's number for up to sixty days in the new state. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action.

R12-4-520. ARIZONA UNIFORM STATE WATERWAY MARKING SYSTEM

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(4), 5-311(A)(5), 5-311(A)(7), and 5-361

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to incorporate the U.S. Coast Guard's uniform state waterway marking system. The rule was adopted to comply with A.R.S. § 5-361, which requires the Commission to adopt rules for uniform

navigational marking standards of waters. This system is intended for use on lakes and inland waterways that aren't covered by nautical charts. These aids also assist watercraft operators in making a safe landfall, mark isolated dangers, enable pilots to follow channels, and provide a continuous chain of charted marks for precise piloting in Arizona waters. They provide valuable information regarding water depths, hazards, and other features that are not available in an atlas or road map.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation. However, the Commission proposes to amend the rule to incorporate by reference the most recent version of 33 C.F.R. 62 to ensure compliance with A.R.S. § 5-361.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

    - Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
    - Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
    - Public Comment Period: October 5, 2012 through November 5, 2012

- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes uniform state waterway marking system in compliance with U.S. Coast Guard regulations. This system assists watercraft operators by providing valuable information regarding water depths, hazards, and other features that are not available in an atlas or road map and are subject to change due to environmental conditions. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 62 is applicable to the subject of the rule. 33 C.F.R. 62 prescribes the general characteristics of the U.S. Aids to Navigation System, and the details, policies and procedures employed by the U.S. Coast Guard in establishing, maintaining, operating, changing or discontinuing Federal aids to navigation. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-520 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Incorporate by reference the most recent version of 33 C.F.R. 62 to ensure compliance with A.R.S. § 5-361.

R12-4-521. PLACING OR TAMPERING WITH REGULATORY MARKERS OR AIDS TO NAVIGATION

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

   Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
   Implementing statute: A.R.S. §§ 5-311(A)(4), 5-311(A)(5), 5-311(A)(7), and 5-361

2. **Objective of the rule, including the purpose for the existence of the rule.**

   The objective of the rule is to establish prohibited activities involving regulatory markers, aids to navigation, or other waterway marking devices. Under A.R.S. § 5-361(A), "No city, county or person shall mark the waters of this state in any manner in conflict with the uniform navigational marking standards of waters as prescribed by the commission or the United States coast guard." The rule was adopted to clearly establish the types of unlawful actions that would result in a violation of statute.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

   The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

   Federal regulation 33 C.F.R. 62 also addresses the use of lights. Amending the rule to include lights allows the Department to address instances where lights are placed along a waterway. For example, a green light placed on a dock gives the impression that a watercraft is being operated in that area. This presents a safety hazard to persons operating another watercraft in the vicinity. The amendment would allow the Department to ask the person responsible for the light to relocate or change the color of the light.

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

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. **Clarity, conciseness, and understandability of the rule.**

   The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the types of unlawful actions that would result in a violation of A.R.S. § 5-361(A). The rule prohibits the unauthorized placement or interference with regulatory markers or aids to navigation and is necessary to ensure public health and safety. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 62 is applicable to the subject of the rule. 33 C.F.R. 62 prescribes the general characteristics of the U.S. Aids to Navigation System, and the details, policies and procedures employed by the U.S. Coast Guard in establishing, maintaining, operating, changing or discontinuing Federal aids to navigation. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-521 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:
Regulate the use of lights to mirror regulations under 33 C.F.R. 62.

R12-4-522. ESTABLISHMENT OF CONTROLLED-USE MARKERS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(4), 5-311(A)(5), 5-311(A)(7), and 5-361

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements for persons requesting to establish, change, or remove controlled-use markers and the follow-up reporting requirements. The rule was adopted to establish a consistent process by which any person or government agency may request the establishment, change, or removal of controlled-use markers on waters under the jurisdiction of the Commission or on waters not under the jurisdiction of another agency. The Department places controlled-use markers only where controlled operation of watercraft is necessary to protect life, property, or habitat, and moves or removes the markers only when the need for the protection changes. On an annual basis, the Department receives approximately one report stating an agency has placed, moved, or removed a controlled-use marker.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any

written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. **Clarity, conciseness, and understandability of the rule.**

   Overall, the rule is clear, concise, and understandable and is logically organized and generally written in the active voice to be understood by the general public. However, internal discussions indicated the rule could be amended to be more accurate. The Department proposes to amend the rule to increase clarity.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to specify the information

required in the written report submitted by an agency placing or removing controlled use markers on waterways in this state to clarify the rule and ensure the appropriate information is contained in the initial report. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes requirements for persons requesting to establish, change, or remove controlled-use markers and follow-up reporting requirements. The Department places controlled-use markers only where controlled operation of watercraft is necessary to protect life, property, or habitat, and moves or removes those markers only if the need for the protection changes. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 62 is applicable to the subject of the rule. 33 C.F.R. 62 prescribes the general characteristics of the U.S. Aids to Navigation System, and the details, policies and procedures employed by the U.S. Coast Guard in establishing, maintaining, operating, changing or discontinuing Federal aids to navigation. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule complies with A.R.S. § 41-1037. The authorization described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-522 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Increase clarity to make the rule more concise.

R12-4-523. CONTROLLED OPERATION OF WATERCRAFT

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(4), 5-311(A)(5), and 5-361

2. Objective of the rule, including the purpose for the existence of the rule.

The rule establishes watercraft operational restrictions for waterways restricted by lawfully placed controlled-use markers and the exceptions under which law enforcement or persons engaged in a rescue operation or participating in a regatta may operate their watercraft in a manner contrary to lawfully imposed restrictions.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

   The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. **Clarity, conciseness, and understandability of the rule.**

   The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

    - Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
    - Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
    - Public Comment Period: October 5, 2012 through November 5, 2012
    - G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
    - Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes exceptions under which law enforcement or persons engaged in a rescue operation or participating in a regatta may operate their watercraft in a manner contrary to lawfully imposed restrictions. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

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

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action.

R12-4-524. WATER SKIING

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-311(A)(7), and 5-346

2. Objective of the rule, including the purpose for the existence of the rule.

The rule establishes water ski observer requirements. The responsibilities of an observer include watching for hazards, observing water skiers, notifying boat operators when a skier has entered the water, and being able to determine approximate points of entry in the water. An observer must be able to perform all of these tasks without direct supervision. The rule language mirrors observer requirements in place in adjoining states, California and Nevada, which helps to reduce regulatory inconsistencies that could result in enforcement issues on shared waterways.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting

the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

The rule is enforced as written. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

The Department proposes to amend the rule to ban "teak surfing". In recent years this risky new fad, also called "drag surfing" has emerged in boat-towed sports. Teak surfing is performed by hanging on the swim platform (often made of teak wood) at the back of a boat while the boat is moving forward in slow motion. Often the teak surfer will release his grip and body surf the boat's wake. An obvious danger is the teak surfer's proximity to the boat propeller. The silent danger is exposure to carbon monoxide, which is tasteless and odorless, and potentially lethal when inhaled. To add to the problem, teak surfers rarely wear life preservers because they inhibit body surfing a wake. According to the Naval Safety Center, "The symptoms of carbon monoxide poisoning may include severe headache, dizziness, confusion, nausea, fainting, and death. Low levels can cause shortness of breath, mild nausea, and a mild headache. Low levels are more dangerous in the boating environment because they can lead to drowning. Carbon-monoxide poisoning may not be suspected immediately because the symptoms are similar to those of people with the flu, food poisoning, or other illnesses." The Department proposes to amend the rule to prohibit this dangerous practice.

The Department further proposes to require observers for all persons who are being towed behind a watercraft or riding a watercraft's wake. In this variation of waterskiing, surfers are pulled behind a watercraft by a towrope. Once a surf wave is created, the wake surfer releases the rope and rides the wave created by the

watercraft. Wake surfers are exposed to the same risks as water skiers and should be subject to the same safety requirements. The Department further proposes to amend the rule to require a wake surfer to wear a PFD.

6. **Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to require the operator of a watercraft to ensure an observer on duty at all times a person is being towed behind the watercraft or is surfing a wake created by the watercraft. Additionally the sport of towed watersports has grown immensely and includes a wide range of devices that are being used. The proposed amendments attempt to include as many of those devices that are known at this time to improve clarity to the public and minimizes misunderstanding of devices regulated by rule.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on December 4, 2007. The rule was amended to add a new Section requiring a person to be physically capable and mentally competent to properly display a ski flag. The Commission anticipated the proposed rulemaking would benefit water skiers by having an observer who is able to display a ski flag in a timely and consistent manner, thus increasing the water skier's safety. The Commission anticipated other water users would benefit by knowing that a well-displayed ski flag means that there is a skier or a towrope in the water, which will reduce the chance of an accident.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

Not applicable, the Department did not indicate a course of action for the rule in the previous five-year review report.

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes water ski observer requirements and places the responsibility on the operator to ensure all persons being towed behind a watercraft are wearing a personal flotation device and are being towed in a manner to minimize carbon-monoxide exposure. The responsibilities of an observer include watching for hazards, observing water skiers, notifying boat operators when a skier has entered the water, and being able to determine approximate points of entry in the water. An observer must be able to perform all of these tasks without direct supervision. The rule language mirrors observer requirements in place in adjoining states, California and Nevada, which helps to reduce regulatory inconsistencies that could result in enforcement issues. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-524 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Require the operator of a watercraft to ensure an observer is on duty at all times a person is being towed behind the watercraft or is surfing a wake created by the watercraft.
- Prohibit persons from "teak surfing" (activity where a person hangs on a swim platform at the back of a watercraft while the boat is moving forward in slow motion).
- Require a person who is wake surfing behind a watercraft to wear a PFD.

R12-4-525. REVOCATION OF WATERCRAFT CERTIFICATE OF NUMBER, AZ NUMBERS, AND DECALS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-391(I), 41-1092, 410-1092.02, 41-1092.04, 41-1092.06, and 41-1092.11

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the revocation process for certificates of number and decals issued by the Department. The rule was adopted after a 2001 Sunset Audit indicated the Department should adopt a rule to establish the revocation authorized under A.R.S. § 5-391(I). Since the rule was adopted, the Department has not revoked any watercraft certificate of numbers, numbers, or decals under this rule.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to revise the rule heading; include the Nonresident Boating Safety Infrastructure decal; extend the time in which a person has to request a hearing; and specify the items being revoked by the Department. The Commission anticipated the proposed rulemaking would have little or no impact on the regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

    - Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
    - Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
    - Public Comment Period: October 5, 2012 through November 5, 2012
    - G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
    - Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

    The rule establishes the revocation process for certificates of number and decals issued by the Department. The rule was adopted after a 2001 Sunset Audit indicated the Department should adopt a rule to establish the revocation authorized under A.R.S. § 5-391(I). The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

R12-4-526. UNLAWFUL MOORING

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. § 5-311(A)(5)

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish watercraft mooring restrictions, prohibitions, and exceptions. The rule was adopted to maintain waters for public use and reduce public nuisance, pollution caused by persons who moor watercraft for extended periods of time and/or unlawfully abandon watercraft.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule is not effective in achieving the objective stated above. Internal comments and comments from other law enforcement agencies indicate other enforcement issues exist. The Department is aware of issues resulting from unlawful mooring. Lake Havasu's Site 6 is a protected, horseshoe-shaped inlet on the north shore of an inhabited island at Lake Havasu and is within the city limits of Lake Havasu City and is connected to the mainland by the London Bridge. Site 6 provides boaters with the only "free" public launch ramp in Lake Havasu City. The center of the land mass is a very convenient parking lot with the southern arm providing free boat launching access with day use slips and a fishing pier. The northern arm is a long inlet with no launching facility.

Because Site 6 is the only free boat launch facility on Lake Havasu, there is heavy watercraft traffic that is encumbered by unattended watercraft that are moored for long periods of time and interferes with boating access. In some cases, persons resort to living on a boat (squatting), but do not properly maintain it so problems arise relating to public safety and water pollution.

Watercraft that are in poor condition or sometimes incapable of navigation are used as "party" platforms where persons use them as overnight floating "crash pads" or docking stations where multiple boats tie off and congregate. Most beaches along Lake Havasu are restricted to day-use only and over-night camping is prohibited, unless otherwise permitted by BLM, or State Parks in designated areas. Mooring a dilapidated watercraft offshore circumvents the day-use and camping restrictions. The rule was adopted to address these long-term mooring issues occurring at Site 6 and other areas along Lake Havasu, particularly around the island.

Both Department officers and Lake Havasu Police Department have requested the rule be amended to enable law enforcement to take action quickly when a watercraft is abandoned or is submerged or sinking as these situations result in a watercraft that is leaking fuel or excrement into the public waterways. The Department proposes to amend the rule to require a person to remove abandoned or submerged watercraft within 72 hours of written or verbal notification and establish the owner of the watercraft is responsible for all towing and storage fees resulting from the removal of the watercraft from waters.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

The rule is enforced as written.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the conflicts between the rule and other jurisdictional regulations result in some public confusion. The Department believes that once the proposed

amendments listed above are adopted the jurisdictional regulations will be similar, resulting in a rule that is more concise.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The following comment was submitted in response to the Notice of Proposed Rulemaking**,** 18 A.A.R. 2437, October 5, 2012:

Written Comment: October 15, 2012. It simply amazes me when AZGFD makes rules, but doesn't abide by them. Maybe it's because AZGFD is a government entity instead of a private company. I don't want to hear that money is tight. Here in Lake Havasu City, no one goes by your rules, boats are abandoned, boats are sinking along the lake and left unattended - check the sinking boats at Site 6, docks are installed on the lake that are not authorized. A makeshift pontoon boat has been left in the reeds for two years south of Mesquite. People fill their jet skis up with gasoline cans on the water and spill gas over the jet ski into the water. I watched one person at Site 6 load 16 people (six were children) on an 18 foot pontoon boat and no one had a life jacket on. AZGFD spent time and money one weekend at Site 6; why not the rest of the weekends? Why not during the week? Check the boats leaving the ramps at Site 6, Windsor north and south for navigation light when leaving at dark. Now that the snowbirds are here, check them for safety equipment on their boats, check them for fishing permits, some don't buy them. Why, "because no one has checked me for years. So why buy a fishing license?" Check the fish cleaning stations at Site 6, Cat Tail, and Windsor; a man and wife, snowbirds from Oregon, were cleaning 24 stripers; I informed them that the limit was 10 stripers each and was told, "There is no one here to check us, so we'll do what we want."

Agency Response: All state and local law enforcement agencies may enforce laws on federal and state navigational waterways; however, law enforcement agencies set their own directives in an effort to better manage their own resources as needed. In addition, your concerns were forwarded to Regional personnel for consideration.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to cross-reference the statutory definition for "person" to expand the regulated community to include any individual, firm, corporation, partnership or association, and any agent, assignee, trustee, executor, receiver or representative thereof and replace the term "individual" with "person" to reduce the burden on officers when trying to locate the person who moored a watercraft unlawfully. The Commission anticipated the proposed rulemaking would have little or no impact on the regulated community.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes watercraft mooring restrictions, prohibitions, and exceptions. The rule was adopted to reduce public nuisances created by unattended watercraft that block or impede access to developed facilities form party platforms in congested areas, or leak deleterious substances (i.e., fuel or excrement) into the waterway. The rule was adopted to address long-term mooring issues occurring at Site 6 and other areas along

Lake Havasu, particularly around the Island that is joined to the mainland by the London Bridge. The narrow navigation channel that separates the Island from the mainland is very congested and lined with commercial businesses and day-use only beaches. The proposed amendment will reduce public confusion as jurisdictional regulations would be similar and more concise. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

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

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-526 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Require a person to remove abandoned or submerged watercraft within 72 hours of written or verbal notification.
- Establish the owner of the watercraft is responsible for all towing and storage fees resulting from the removal of the watercraft from waters.

R12-4-527. TRANSFER OF OWNERSHIP OF A TOWED WATERCRAFT

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(1), 5-324(E)(9), 5-399, 5-399.01, 5-399.02, and 5-399.03

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish transfer of ownership requirements for a watercraft in possession of a towing company. The rule was adopted to establish requirements necessary to ensure compliance with A.R.S. § 5-399 *et al*, which prescribes the basic procedures that allow a towing company to take ownership of a watercraft left unclaimed. On an annual basis, the Department transfers approximately 30 watercraft to towing companies under this rule.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

Overall, the rule is enforced as written; however, the Department is aware of enforcement issues relating to the notification required under A.R.S. § 5-399(A), which states, "If a towing company tows a watercraft, the towing company shall provide written notification by mail to the owner and lienholder, if known, of the watercraft's location. The towing company shall obtain the owner and lienholder information pursuant to section 5-324." Because the statute does not provide a time-frame, the towing company is not obligated to notify the owner/lienholder of the impounded watercraft's location in a timely manner, which results in the accrual of additional impound fees. By the time the towing company notifies the owner/lienholder, storage fees can become so great that the owner/lienholder opts to give the watercraft to the towing company in lieu of paying those fees. In addition, a towing company will wait until they have a buyer before applying for a certificate of number. Under A.R.S. § 5-399(B), the towing company is required to submit an application for ownership of the abandoned watercraft within 15 days of mailing the notice to the owner/lienholder if the watercraft is not

removed. The Department proposes to amend the rule to require a towing company to request the owner/lienholder information within 15 days of possession of the watercraft and to require the towing company to apply for a certificate of number for watercraft that are not removed from the towing companies' premises within 30 days of mailing the notice to the owner/lienholder. These time-frames mirror the times given to the towing company under statute. The Department also proposes to amend the rule to establish a $25 penalty fee for failure to comply with the 15 and 30-day time-frames. These amendments are authorized under A.R.S. § 5-399.03 which states, "The department may adopt rules to carry out the requirements of this article and establish fees to implement this article."

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to provide the rule requirements in the order in which the process occurs and follow-up requirements applicable to the towing company to make the rule more concise. In addition, the Department proposes to amend the rule to remove the reference to the Director as the person who receives the documentation required to transfer ownership of a watercraft in a towing company's possession as it is the Department's watercraft program that will process the towing company's application.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

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

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to remove the requirement that the towing company present the watercraft to a regional office and remove unnecessary statutory references. The Commission anticipated the proposed amendments will benefit both the Department and the regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes transfer of ownership requirements for a watercraft in possession of a towing company. The rule was adopted to establish requirements necessary to ensure compliance with A.R.S. § 5-399 *et al*, which prescribes the basic procedures that allow a towing company to take ownership of a watercraft left unclaimed. The proposed amendments will have no impact on towing companies that are in compliance with statutory requirements. Towing companies that are not in compliance will pay a minimal penalty for failing to comply with statute and rule. However, the Department intends to conduct outreach activities designed to notice towing companies of the proposed amendment prior to presenting the Notice of Proposed Rulemaking to the Commission. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule and will benefit members of the public whose watercraft are towed.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The certificate of number described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-527 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Require a towing company to request the owner/lienholder information within 15 days of possession of the watercraft.
- Require a towing company to apply for a certificate of number for watercraft that are not removed from the towing companies' premises within 30 days of mailing the notice to the owner/lienholder.
- Establish a $25 penalty fee for failure to comply with the 15 and 30-day time-frames.
- Remove the reference to the Director as the person who receives the documentation required to transfer ownership of a watercraft in a towing company's possession.

R12-4-528. WATERCRAFT CHECKPOINTS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-311(A)(7), 5-391(B), 5-391(C), and 5-393

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish watercraft checkpoint requirements. The rule was adopted to establish the procedures a watercraft operator must follow when directed to stop by a law enforcement officer and is necessary to ensure public health and safety and to prevent the misuse of public recreational areas. On an annual basis, the Department participates in approximately six multi-agency watercraft checkpoints to screen for unsafe or impaired watercraft operators to ensure public safety on state waterways or to gather demographic, statistical, and compliance information related to watercraft activities.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

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

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

    - Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
    - Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
    - Public Comment Period: October 5, 2012 through November 5, 2012

- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes watercraft checkpoint requirements. The rule was adopted to establish the procedures a watercraft operator must follow when directed to stop by a law enforcement officer and is necessary to ensure public health and safety and to prevent the misuse of public recreational areas. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

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

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action.

R12-4-529. NONRESIDENT BOATING SAFETY INFRASTRUCTURE FEES; PROOF OF PAYMENT; DECAL

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)
Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, 5-326, and 5-327

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the nonresident boating safety infrastructure fee (NBSIF) schedule, based on the length of the watercraft, and the manner in which a non-resident recreational watercraft owner may provide acceptable proof of payment of the fee. The rule was adopted pursuant to A.R.S. § 5-326, which requires nonresident owners of watercraft who establish this state as the state of principal operation to pay an additional boating safety infrastructure fee assessed pursuant to A.R.S. § 5-327 before placing that watercraft on the waters of this state. The nonresident fees set forth in this rule are the same fees that existed in statute before A.R.S. § 5-327 was amended. On an annual basis, the Department collects approximately $2,681,840 in revenue from Nonresident Boating Safety Infrastructure Fees.

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

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

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

Overall, the rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. However, when the rule was first adopted, the Department authorized different options as proof of payment of the fee. The Department has since determined the most efficient option is to indicate the NBSIF fee was paid is on the registration decal. As a result, the Department proposes to amend the rule to remove references and requirements relating to the Arizona NBSIF Decal.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to establish NBSIF fees by rule. These fees were previously prescribed under A.R.S. § 5-327. Because the exempt rulemaking only established NBSIF fees that were previously prescribed by statute, the Commission anticipated the proposed rule would have little or no impact on the regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

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

Not applicable; the rule was adopted July 1, 2013 and did not exist when the previous five-year review report was completed.

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

    The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to establish NBSIF fees by rule. These fees were previously prescribed under A.R.S. § 5-327. Because the exempt rulemaking only established fees that were previously prescribed by statute, the Commission anticipated the proposed rule would have little or no impact on the regulated community.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

    The rule complies with A.R.S. § 41-1037. The Arizona Watercraft Registration Decal described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

    The Department proposes to amend R12-4-529 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

    - Remove references and requirements relating to the Arizona NBSIF Decal.

ARTICLE 5. BOATING AND WATER SPORTS

Section

R12-4-501. Boating and Water Sports Definitions
R12-4-502. Application for Watercraft Registration
R12-4-503. Renewal of Watercraft Registration
R12-4-504. Watercraft Registration Fees; Penalty for Late Registration; Staggered Registration Schedule
R12-4-505. Hull Identification Numbers
R12-4-506. Invalidation of Watercraft Registration and Decals
R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft
R12-4-508. New Watercraft Exchanges
R12-4-509. Watercraft Agents
R12-4-510. Refund of Fees Paid in Error
R12-4-511. Personal Flotation Devices
R12-4-512. Fire Extinguishers Required for Watercraft
R12-4-513. Watercraft Accident and Casualty Reports
R12-4-514. Liveries
R12-4-515. Display of AZ Numbers and Registration Decals
R12-4-516. Watercraft Sound Level Restriction
R12-4-517. Watercraft Motor and Engine Restrictions
R12-4-518. Regattas
R12-4-519. Reciprocity
R12-4-520. Arizona Uniform State Waterway Marking System
R12-4-521. Placing or Tampering with Regulatory Markers or Aids to Navigation
R12-4-522. Establishment of Controlled-Use Markers
R12-4-523. Controlled Operation of Watercraft
R12-4-524. Water Skiing
R12-4-525. Revocation of Watercraft Certificate of Number, AZ Numbers, and Decals
R12-4-526. Unlawful Mooring
R12-4-527. Transfer of Ownership of a Towed Watercraft
R12-4-528. Watercraft Checkpoints
R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal
R12-4-530. Reserved through R12-4-540
R12-4-541. Repealed
R12-4-542. Repealed
R12-4-543. Repealed
R12-4-544. Repealed
R12-4-545. Repealed

R12-4-501. Boating and Water Sports Definitions

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

"Abandoned watercraft" means any watercraft that has remained:

On private property without the consent of the private property owner;
Unattended for more than 48 hours on a highway, public street, or other public property;
Unattended for more than 72 hours on state or federal lands; or
Unattended for more than 14 days on state or federal waterways.

"Aids to navigation" means buoys, beacons, or other fixed objects placed on, in, or near the water to mark obstructions to navigation or to direct navigation through channels or on a safe course.

"AZ number" means the Department-assigned identification number with the prefix "AZ."

"Bill of sale" means a written agreement transferring ownership of a watercraft that includes all of the following information:

Name of buyer;
Name of seller;
Manufacturer of the watercraft, when known;
Hull identification number, unless exempt under R12-4-505;
Purchase price and sales tax paid, when applicable; and
Signature of seller.

"Boats keep out" in reference to a regulatory marker means the operator or user of a watercraft, or a person being towed by a watercraft on water skis, a surfboard, or similar device or equipment shall not enter.

"Certificate of number" means the Department-issued document that is proof that a motorized watercraft is registered in the name of the owner.

"Certificate of origin" means a document provided by the manufacturer of a new watercraft or its distributor, its franchised new watercraft dealer, or the original purchaser establishing the initial chain of ownership for a watercraft, such as but not limited to:

Manufacturer's certificate of origin (MCO);
Manufacturer's statement of origin (MSO):
Importer's certificate of origin (ICO);
Importer's statement of origin (ISO); or
Builder's certification (Form CG-1261).

"Controlled-use marker" means an anchored or fixed marker on the water, shore, or a bridge that controls the operation of watercraft, water skis, surfboards, or similar devices or equipment.

"Dealer" means any person who engages in whole or in part in the business of buying, selling, or exchanging new or used watercraft, or both, either outright or on conditional sale, consignment, or lease.

"Homemade watercraft" means a watercraft that is not fabricated or manufactured for resale and to which a manufacturer has not attached a hull identification number. If a watercraft is assembled from a kit or constructed from an unfinished manufactured hull and does not have a manufacturer assigned hull identification number it is a "homemade watercraft."

"Hull identification number" means a number assigned to a specific watercraft by the manufacturer or by a government jurisdiction as prescribed by the U.S. Coast Guard.

"Junk watercraft" means any hulk, derelict, wreck, or parts of any watercraft in an unseaworthy or dilapidated condition that cannot be profitably dismantled or salvaged for parts or profitably restored.

"Letter of gift" means a document transferring ownership of a watercraft that includes all of the following information:

Name of previous owner;
Name of new owner;
Name of manufacturer of the watercraft, when known;
Hull identification number, unless exempt under R12-4-505;
A statement that the watercraft is a gift; and
Signature of previous owner.

"Livery" means a business authorized to rent watercraft without an operator as prescribed under A.R.S. § 5-371.

"Manufacturer" means any person engaged in the business of manufacturing or importing new watercraft for the purpose of sale or trade.

"Motorized watercraft" means any watercraft propelled by machinery and powered by electricity, fossil fuel, or steam.

"No ski" in reference to a regulatory marker means a person shall not be towed on water skis, an inflatable device, or similar equipment.
"Nonresident Boating Safety Infrastructure Decal" means the Department-issued decal that is proof of payment of the fee authorized under A.R.S. § 5-327.
"No wake" in reference to a regulatory marker has the same meaning as "wakeless speed" as defined under A.R.S. § 5-301.
"Operate" in reference to a watercraft means use, navigate, or employ.
"Owner" in reference to a watercraft means a person who claims lawful possession of a watercraft by virtue of legal title or equitable interest that entitles the person to possession.
"Personal flotation device" means a U.S. Coast Guard approved Type I, II, III, or V wearable, or Type IV throwable device for use on any watercraft, as prescribed under A.R.S. §§ 5-331, 5-350(A), and R12-4-511.
"Regatta" means an organized water event of limited duration affecting the public use of waterways, for which a lawful jurisdiction has issued a permit.
"Registered owner" means the person or persons to whom a watercraft is currently registered by any jurisdiction.
"Registration decal" means the Department-issued decal that is proof of watercraft registration.
"Regulatory marker" means a waterway marker placed on, in, or near the water to indicate the presence of:

A danger,
A restricted or controlled-use area, or
To convey general information and directions.

"Release of interest" means a statement surrendering or abandoning unconditionally any claim or right of ownership or use in a watercraft.
"Sound level" means the noise level measured in decibels on the A-weighted scale of a sound level instrument that conforms to recognized industry standards and is maintained according to the manufacturer's instructions.
"Staggered registration" means the system of renewing watercraft registrations in accordance with the schedule provided under R12-4-504.
"State of principal operation" means the state in whose waters the watercraft is used or will be operated most during the calendar year.
"Unreleased watercraft" means a watercraft for which there is no written release of interest from the registered owner.
"Watercraft" means a boat or other floating device of rigid or inflatable construction designed to carry people or cargo on the water and propelled by machinery, oars, paddles, or wind action on a sail. Exceptions are sea-planes, makeshift contrivances constructed of inner tubes or other floatable materials that are not propelled by machinery, personal flotation devices worn or held in hand, and other objects used as floating or swimming aids.
"Watercraft agent" means a person authorized by the Department to collect applicable fees for the registration and numbering of watercraft.
"Watercraft registration" means the validated certificate of number and validating decals issued by the Department.

Historical Note

Editorial correction subsection (A) (Supp. 78-5). Former Section R12-4-83 renumbered as Section R12-4-501 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-501 renumbered to R12-4-515, new Section R12-4-501 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R.

4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-502. Application for Watercraft Registration

A. Only motorized watercraft as defined under R12-4-501 are subject to watercraft registration.

B. A person shall apply for watercraft registration under A.R.S. § 5-321 using a form furnished by the Department and available at any Department office or online at www.azgfd.gov. The applicant shall provide the following information for registration of all motorized watercraft except homemade watercraft, which are addressed under subsection (C):

1. Type of watercraft;
2. Propulsion type;
3. Engine drive type;
4. Overall length of watercraft;
5. Make and model of watercraft, if known;
6. Year built or model year, if known;
7. Hull identification number;
8. Hull material;
9. Fuel type;
10. Category of use;
11. Watercraft or AZ number previously issued for the watercraft, if any;
12. State of principal operation; and
13. For watercraft:
    a. Owned by an individual:
        i. Name,
        ii. Mailing address, and
        ii. Date of birth.
    b. Owned by a business:
        i. Name of business
        ii. Business address, and
        iii. Tax Identification Number
    c. Held in a trust:
        i. Name of trust,
        ii. Primary trustee’s address, and
        iii. Date of trust.
14. When ownership of the watercraft is in more than one name, the applicant shall indicate ownership designation by use of one of the following methods:
    a. Where ownership is joint tenancy with right of survivorship, the applicant shall use “and/or” between the names of the owners. To transfer registration of the watercraft, each owner shall provide a signature. Upon legal proof of the death or incompetency of either owner, the remaining owner may transfer registration of the watercraft.
    b. Where ownership is a tenancy in common the applicant shall use “and” between the names of the owners. To transfer registration of the watercraft, each owner shall provide a signature. In the event of the death or incompetency of any owner, the disposition of the watercraft shall be handled through appropriate legal proceedings.
    c. Where the ownership is joint tenancy or is community property with an express intent that either of the owners has full authority to transfer registration, the applicant shall use “or” between the names of the owners. Each owner shall sign the application for registration. To transfer registration, either owner's signature is sufficient for transfer.

C. The builder, owner, or owners of a homemade watercraft shall present the watercraft for inspection at a Department office. The applicant shall provide the following information for registration of homemade watercraft, using the same ownership designations specified in subsection (A)(14):

1. Type of watercraft;
2. Propulsion type;
3. Engine drive type;
4. Overall length of watercraft;
5. Year built;
6. Hull material;
7. Fuel type;
8. Category of use;
9. Each owner's:

a. Name,
b. Mailing address, and
c. Date of birth;

10. State of principal operation;
11. Whether the watercraft was assembled from a kit or rebuilt from a factory or manufacturer's hull;
12. Hull identification number, if assigned; and
13. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.

D. As prescribed under A.R.S. § 5-321, the applicant shall submit a use tax receipt issued by the Arizona Department of Revenue with the application for registration unless any one of the following conditions apply:

1. The applicant is exempt from use tax as provided under A.A.C. Title 15, Chapter 5,
2. The applicant is transferring the watercraft from another jurisdiction to Arizona without changing ownership,
3. The applicant submits a bill of sale or receipt showing the sales or use tax was paid at the time of purchase, or
4. The applicant submits a notarized affidavit of exemption stating that the acquisition of the watercraft was for rental or resale purposes.

E. An applicant for a watercraft dealer registration authorized under A.R.S. § 5-322(F), shall be a business offering watercraft for sale or a watercraft manufacturer registered by the U.S. Coast Guard. A person shall display dealer registration for demonstration purposes only. For the purposes of this Section, "demonstration" means to operate a watercraft on the water for the purpose of selling, trading, negotiating, or attempting to negotiate the sale or exchange of interest in new watercraft, which includes operation by a manufacturer for purposes of testing a watercraft. Demonstration does not include operation of a watercraft for personal purposes by a dealer or manufacturer or an employee, family member, or an associate of a dealer or manufacturer. A watercraft dealer registration applicant shall submit an application to the Department. The application is furnished by the Department and is available at any Department office. The applicant shall provide the following information on the application:

1. All business names used for the sale or manufacture of watercraft in Arizona;
2. Mailing address and telephone number for each business for which a watercraft dealer registration is requested;
3. Tax privilege license number;
4. U.S. Coast Guard manufacturer identification code, when applicable;
5. Total number of certificates of number and decals requested; and

6. The business owner's or manager's:
   a. Name,
   b. Business address,
   c. Telephone number, and
   d. Signature.

F. In addition to submitting the application form and any other information required under this Section, the applicant for watercraft registration shall submit one of the following additional forms of documentation:

1. Original title if the watercraft is titled in another state,
2. Original registration if the watercraft is from a non-titling state,
3. Bill of sale as defined under R12-4-501 if the watercraft has never been registered or titled in any state,
4. Letter of gift as defined under R12-4-501 if the watercraft was received as a gift and was never registered or titled in another state,
5. Court order or other legal documentation establishing lawful transfer of ownership, or
6. Statement of facts form furnished by the Department and available from any Department office when none of the documentation identified under subsections (F)(1) through (F)(5) exists either in the possession of the watercraft owner or in the records of any jurisdiction responsible for registering or titling watercraft. An applicant for watercraft registration under a statement of facts shall present the watercraft for inspection at a Department office. The statement of facts form shall include the following information:
   a. Hull identification number,
   b. Certification that the watercraft meets one of the following conditions:
      i. The watercraft was manufactured prior to 1972, is 12 feet in length or less, and is not propelled by an inboard engine;
      ii. The watercraft is owned by the applicant and has never been registered or titled;
      iii. The watercraft was owned in a state that required registration, but was never registered or titled; or
      iv. The watercraft was purchased, received as a gift, or received as a trade and has not been registered, titled, or otherwise documented in the past five years.
   c. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
7. An original certificate of origin when all of the following conditions apply:
   a. The watercraft was purchased as new,
   b. The applicant is applying for watercraft registration within a year of purchasing the watercraft, and
   c. The certificate of origin is not held by a lien holder.

G. If the watercraft is being transferred to a person other than the original listed owner, the applicant for a watercraft registration shall submit a release of interest.

H. If the original title is held by a lien holder, the applicant for a watercraft registration shall submit a form furnished by the Department and available from any Department office along with a copy of the title. The applicant shall comply with the following requirements when submitting the form:

1. The applicant shall provide the following information on the form:
   a. Applicant's name,
   b. Applicant's mailing address,
   c. Watercraft make, and
   d. Watercraft hull identification number.
2. The applicant shall ensure the lien holder provides the following information on the form:

a. Lien holder's name,
b. Lien holder's mailing address,
c. Name of person completing the form for the lien holder,
d. Title of person completing the form for the lien holder, and
e. Signature of the person completing the form for the lien holder, acknowledged before a Notary Public or witnessed by a Department employee.

I. The Department shall issue a watercraft registration within 30 calendar days of receiving a valid application and documentation required by this Section, whether from the applicant or from a watercraft agent authorized under R12-4-509.

J. The Department shall register a watercraft, if the watercraft's original title or registration is lost, upon receipt of one of the following:
1. A letter or printout from any jurisdiction responsible for registering or titling watercraft that verifies the owner of record for that specific watercraft;
2. A printout of the Vessel Identification System from the U.S. Coast Guard and verification from the appropriate state agency that the information regarding the owner of record for that specific watercraft is correct and current;
3. A statement of facts by the applicant as described under subsection (F)(6) if the watercraft has not been registered, titled, or otherwise documented in the past five years; or
4. The abandoned or unreleased watercraft approval letter issued by the Department, as established under R12-4-507(I).

K. All watercraft registrations and supporting documentation are subject to verification by the Department and to the requirements established under R12-4-505. The Department shall require a watercraft to be presented for inspection to verify the information provided by an applicant if the Department has reason to believe the information provided by the applicant is inaccurate.

L. The Department shall deem an application invalid if the Department receives legal documentation of any legal action that may affect ownership of the watercraft.

M. The Department shall invalidate a watercraft registration if the registration is obtained by an applicant who makes a false statement or provides false information on any application, statement of facts, or written instrument submitted to the Department.

Historical Note

Former Section R12-4-84 renumbered as Section R12-4-502 without change effective August 13, 1981 (Supp. 81-4). Amended effective January 2, 1985 (Supp. 85-1). Former Section R12-4-502 repealed, new Section R12-4-502 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-503. Renewal of Watercraft Registration

A. The owner of a registered watercraft shall ensure the watercraft's registration is renewed no later than the day before the prior registration period expires.

B. To renew a watercraft's registration in person or by mail, an applicant shall pay the registration fee authorized under A.R.S. § 5-321 and present one of the following:
1. Current or prior certificate of number,
2. Valid driver's license,
3. Valid Arizona Motor Vehicle Division identification card,
4. Valid passport, or
5. Department-issued renewal notice.

C. To renew a watercraft's registration online, an applicant shall electronically pay the registration fee authorized under A.R.S. § 5-321, provide the assigned Arizona watercraft AZ number of the watercraft being renewed, and one of the following to the Department or its agent:
1. Department-assigned authorization number,
2. Applicant's date of birth, or
3. Applicant's password.

D. When a watercraft registration is renewed by mail or online, the Department shall mail the renewal to the address of record, unless the Department receives a notarized request from the registered owner instructing the Department to mail the renewal to another address.

Historical Note

Former Section R12-4-85 renumbered as Section R12-4-503 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-503 renumbered to R12-4-519, new Section R12-4-503 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-504. Watercraft Registration Fees; Penalty for Late Registration; Staggered Registration Schedule

A. The following fees are required, when applicable as authorized under A.R.S. §§ 5-321 and 5-322:
1. Motorized watercraft registration fees are assessed as follows:
   a. Twelve feet and less: $20
   b. Twelve feet one inch through sixteen feet: $22
   c. Sixteen feet one inch through twenty feet: $30
   d. Twenty feet one inch through twenty-six feet: $35
   e. Twenty-six feet one inch through thirty-nine feet: $39
   f. Thirty-nine feet one inch through sixty-four feet: $44
   g. Sixty-four feet one inch and over: $66
   h. For the purposes of this subsection, the length of the motorized watercraft shall be measured in the same manner prescribed under A.R.S. § 5-321(C).
2. Motorized watercraft transfer fee: $4.
3. Duplicate motorized watercraft registration: $2.
4. Duplicate decal: $2.
5. Watercraft dealer certificate of number: $2.50.

B. The Department or its agent shall collect the entire registration fee for a late registration renewal and a penalty fee of $5, unless exempt under A.R.S. § 5-321(L), or unless the expiration date falls on a Saturday, Sunday, or state holiday, and the registration is renewed before the close of business on the next working day. The Department or its agent shall not assess a penalty fee when a renewal is mailed before the expiration date, as evidenced by the postmark.

C. All new watercraft registrations expire 12 months after they are issued.

D. Resident and nonresident watercraft registration renewals expire on the last day of the month indicated by the last two numeric digits of the AZ number, as shown in the following table:

Last two numeric digits of AZ number									Expiration month
00	12	24	36	48	60	72	84	96	December
01	13	25	37	49	61	73	85	97	January
02	14	26	38	50	62	74	86	98	February

03	15	27	39	51	63	75	87	99	March
04	16	28	40	52	64	76	88		April
05	17	29	41	53	65	77	89		May
06	18	30	42	54	66	78	90		June
07	19	31	43	55	67	79	91		July
08	20	32	44	56	68	80	92		August
09	21	33	45	57	69	81	93		September
10	22	34	46	58	70	82	94		October
11	23	35	47	59	71	83	95		November

C. Watercraft dealer, manufacturer, and governmental use registration renewals expire on October 31 of each year.

D. Livery and all other commercial use registration renewals expire on November 30 of each year.

Historical Note

Amended effective December 5, 1978 (Supp. 78-6). Amended effective March 6, 1980 (Supp. 80-2). Former Section R12-4-86 renumbered as Section R12-4-504 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-504 repealed, new Section R12-4-504 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Sup. 03-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-505. Hull Identification Numbers

A. The Department shall not register a watercraft without a hull identification number.

B. The Department shall verify watercraft manufactured after November 1, 1972, have a primary hull identification number that complies with the requirements established under 33 CFR 181, subpart C. The Department shall assign a hull identification number when the watercraft hull identification number does not meet the requirements established under 33 CFR 181, subpart C.

C. The hull identification number shall be fully visible and unobstructed at all times. Watercraft manufactured prior to August 1, 1984, are exempt from this requirement provided the obstruction is original equipment and was attached by the manufacturer.

D. The Department shall assign a hull identification number to a watercraft with a missing hull identification number only if the Department determines:

1. The hull identification number was not illegally removed or altered, unless the application is accompanied by an order of forfeiture, order of seizure, or other civil process; or
2. The missing hull identification number was caused by error of the manufacturer or a government jurisdiction or failure of a previous owner of a watercraft to comply with this rule, or because the watercraft is a homemade watercraft as defined under R12-4-501.

E. The Department may assign a hull identification number within 30 days of receipt of a valid application, as described under R12-4-502.

F. The Department may accept a bill of sale presented with a missing or improper hull identification number for registration purposes only if:

1. It matches the improper hull identification number or there is no hull identification number on the watercraft; or
2. A hull identification number is issued by the Department under subsection (D).

G. Within 30 days of issuance, the applicant or registered owner shall:

1. Burn, carve, stamp, emboss, mold, bond, or otherwise permanently affix each hull identification number to a non-removable part of the watercraft in a manner that ensures any alteration, removal, or replacement will be obvious.
2. Ensure the characters of each hull identification number affixed to the watercraft are no less than 1/4 inch in height.
3. Permanently affix the hull identification number as follows:
   a. On watercraft with transoms, affix the hull identification number to the right or starboard side of the transom within two inches of the top of the transom or hull/deck joint, whichever is lower.
   b. On watercraft without a transom, affix the hull identification number to the starboard outboard side of the hull, back or aft within one foot of the stern and within two inches of the top of the hull, gunwale, or hull/deck joint, whichever is lowest.
   c. On a catamaran or pontoon boat, affix the hull identification number on the aft crossbeam within one foot of the starboard hull attachment.
   d. As close as possible to the applicable location established under subsections (a), (b), or (c) when rails, fittings, or other accessories obscure the visibility of the hull identification number.
   e. Affix a duplicate of the visibly affixed hull identification number in an unexposed location on a permanent part of the hull.
4. Certify to the Department that the hull identification number was permanently affixed to the watercraft as required under subsection (G). The certification statement is furnished by the Department when the hull identification number is issued. The certification statement shall include the location of the permanently affixed hull identification number.

Historical Note
Amended effective January 1, 1980 (Supp. 79-6). Former Section R12-4-87 renumbered as Section R12-4-505 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-505 repealed, new Section R12-4-505 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-506. Invalidation of Watercraft Registration and Decals

A. Any watercraft registration obtained by fraud or misrepresentation is invalid from the date of issuance.

B. A certificate of number and any decals issued by the Department under R12-4-502 and R12-4-529 are invalid if any of the following occurs:
1. Any check, money order, or other currency certificate presented to the Department for payment of watercraft registration or renewal is found to be non-negotiable;
2. Any person whose name appears on the certificate of number loses ownership of the watercraft by legal process;
3. Arizona is no longer the state of principal operation;
4. The watercraft is documented by the U.S. Coast Guard;
5. An applicant provides incomplete or incorrect information to the Department and fails to provide the correct information within 30 days after a request by the Department;
6. The Department revokes the certificate of number, AZ numbers, and decals as provided under A.R.S. § 5-391(I); or
7. The Department erroneously issued a certificate of number or any decals.

C. A person shall surrender the invalid certificate of number and decals to the Department within 15 calendar days of receiving written notification from the Department.

D. The Department shall not validate or renew an invalid watercraft registration or decals until the reason for invalidity is corrected or no longer exists.

Historical Note

Adopted effective December 4, 1984 (Supp. 84-6). Amended subsection (B) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsection (B) effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Former Section R12-4-506 repealed, new Section R12-4-506 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

A. A person who has knowledge and custody of a watercraft abandoned on private property owned by that person may attempt to obtain ownership of the watercraft by way of the abandoned watercraft transfer process.

B. The last registered owner of an abandoned or unreleased watercraft is presumed to be responsible for the watercraft, unless the watercraft is reported stolen.

C. The operator of a self-storage facility located in this state and having a possessory lien shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 15, Article 1 when attempting to obtain ownership of a watercraft abandoned while in storage.

D. A person having a possessory lien under a written rental agreement shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 7, Article 6 when attempting to obtain ownership of a watercraft for which repairs or service fees remain unpaid.

E. Only a person acting within the scope of official duties as an employee or authorized agent of a government agency may order the removal of a watercraft abandoned on public property or a public waterway.

F. A person seeking ownership of an abandoned or unreleased watercraft shall submit an application to the Department. The application is furnished by the Department and available at any Department office. The application shall include the following information, if available:

1. Hull identification number, unless exempt under R12-4-505;
2. Registration number;
3. Decal number;
4. State of registration;
5. Year of registration;
6. Name, address, and daytime telephone number of the person who found the watercraft;
7. For abandoned watercraft:
   a. Address or description of the location where the watercraft was found,
   b. Whether the watercraft was abandoned on private or public property, and
   c. When applicable, for watercraft abandoned on private property, whether the applicant is the legal owner of the property;
8. Condition of the watercraft: wrecked, stripped, or intact;
9. State in which the watercraft will be operated;
10. Length of time the watercraft was abandoned;
11. Reason why the applicant believes the watercraft is abandoned; and
12. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.

G. This state and its agencies, employees, and agents are not liable for relying in good faith on the contents of the application.

H. The Department shall attempt to determine the name and address of the registered owner by:

1. Conducting a search of its watercraft database when documentation indicates the watercraft was previously registered in this state, or
2. Requesting the watercraft record from the other state when documentation indicates the watercraft was previously registered in another state.

I. If the Department is able to determine the name and address of the registered owner, the Department shall send written notice of the applicant's attempt to register the watercraft to the owner by certified mail, return receipt requested.

1. If service is successful or upon receipt of a response from the registered owner, the Department shall send the following written notification to the applicant, as appropriate:
   a. If the registered owner provides a written release of interest in the watercraft, the Department shall mail the release of interest and an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
   b. If the registered owner provides written notice to the Department refusing to release interest in the watercraft, the Department shall notify the applicant of the owner's refusal. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502.
   c. If the registered owner does not respond to the notice in writing within 30 days from the date of receipt, the Department shall notify the applicant of the owner's failure to respond. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502;
   d. If the registered owner does not respond to the notice within 180 days from the date of receipt of the notice, this failure to act shall constitute a waiver of interest in the watercraft by any person having an interest in the watercraft, and the watercraft shall be deemed abandoned for all purposes. The Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
2. If the written notice is returned unclaimed or refused, the Department shall notify the applicant within 15 days of the notice being returned that the attempt to contact the registered owner was unsuccessful.

J. If the Department is unable to identify or serve the registered owner, the Department shall publish a notice of intent once in a newspaper or other publication of general circulation in this state within 45 days of the Department's notification to the applicant as provided in subsection (I)(2).

1. The published notice shall include a statement of the Department's intent to transfer ownership of the watercraft ten days after the date of publication, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten day period following publication.
2. Upon request, the Department shall make available to the public a description of the abandoned or unreleased watercraft subject to transfer of ownership.
3. If the watercraft remains unclaimed after the ten day period, the Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.

K. A government agency may submit an application for authorization to dispose of a junk watercraft abandoned on state or federal lands or waterways. The application is furnished by the Department and is available at any Department Office. Upon receipt of the application, the Department shall attempt to determine the name and address of the registered owner. If the Department is unable to identify and serve the registered owner, the Department shall publish a notice of intent to authorize the disposal of the junk watercraft as described in subsection (J).

1. The published notice shall include a statement of the Department's intent to authorize the disposal of the watercraft ten days after the date of publication, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten day period following publication.
2. If the watercraft remains unclaimed after the ten day period, the Department shall mail an authorization to dispose of the junk watercraft to the government agency. The government agency may dispose of the abandoned watercraft and all indicia for that watercraft in any manner the agency determines expedient or convenient.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-508. New Watercraft Exchanges

A. A person may request a no-fee replacement registration for a new watercraft, provided all of the following conditions apply:

1. The person purchased the newly registered watercraft from a new watercraft dealer,
2. The person returned the watercraft to the new watercraft dealer within 30 days of purchase, and
3. The new watercraft dealer exchanged the returned watercraft for a watercraft of the same year, make, and model within the same 30 day period.

B. To obtain a no-fee replacement registration, the person shall submit the original watercraft registration and a letter from the new watercraft dealer to the Department. The letter shall include all of the following information:

1. A statement that the original watercraft was replaced,
2. The hull identification number for the original watercraft,
3. The hull identification number for the replacement watercraft,
4. The buyer's name, and
5. The new watercraft dealer's name.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-509. Watercraft Agents

A. The Department has the authority to authorize a watercraft dealer to act as an agent on behalf of the Department for the purpose of issuing temporary certificates of number valid for 30 days for new watercraft, provided:

1. The applicant's previous authority to act as a watercraft agent under A.R.S. § 5-321(I) has not been canceled by the Department within the preceding 24 months, and

2. The applicant is a business located and operating within this state and sells watercraft for an identified manufacturer.

B. An applicant seeking watercraft dealer authorization shall submit an application to the Department. The application is furnished by the Department and available at the Arizona Game and Fish Department, 5000 W. Carefree Highway, Phoenix, AZ 85086. The applicant shall provide the following information on the application:

1. Principal business or corporation name, address, and telephone number or if not a corporation, the full name, address, and telephone number of all owners or partners;
2. Name, address, and telephone number of the owner or manager responsible for compliance with this Section;
3. Whether the applicant has previously issued temporary certificates of number under A.R.S. § 5-321(I);
4. All of the following information specific to the location from which new watercraft are to be sold and temporary certificates of number issued:
   a. Name of owner or manager;
   b. Business hours;
   c. Business telephone number;
   d. Business type;
   e. Storefront name; and
   f. Street address;
5. Manufacturers of the watercraft to be distributed; and
6. Signature of person named under subsection (B)(2).

C. The Department shall either approve or deny the application within the licensing time-frame established under R12-4-106.

D. The watercraft dealer shall:

1. Use the assigned watercraft dealer number when issuing a temporary certificate of number,
2. Use the online application system or forms supplied by the Department; and
3. Collect the appropriate fee as prescribed under A.R.S. §§ 5-321 and 5-327.

E. Authorization to act as a watercraft agent is specific to the dealer's business location designated on the application and approved by the Department, unless the dealer is participating in a scheduled, advertised boat show for the purpose of selling watercraft.

F. A watercraft dealer shall not destroy prenumbered temporary certificate of number applications provided by the Department. The watercraft dealer shall mark the unused prenumbered application "void" and return the application to the Department with the monthly report required under subsection (J).

G. The Department shall provide supplies within 30 calendar days after receipt of the watercraft dealer's request form. The watercraft dealer shall verify supplies were received within seven days of receipt.

H. A watercraft dealer issuing a temporary certificate of number to the purchaser of a new watercraft shall comply with all the following:

1. The watercraft dealer shall obtain an application if the watercraft is purchased from the dealer or the applicant's bill of sale containing the following information:
   a. Statement that the watercraft is new;
   b. Names and addresses of the buyer and seller;
   c. Date of purchase;
   d. Amount of sales tax paid;
   e. Purchase price;
   f. Make and model of watercraft, if known;
   g. Engine drive type;

h. Length of the watercraft;
i. Year of manufacture; and
j. Hull identification number.

2. The watercraft dealer shall identify to the applicant the state registration fee and the nonresident boating safety infrastructure fee, when applicable, separately from any other costs.
3. Within 72 hours after issuing a temporary certificate of number, a watercraft dealer shall deliver or mail the legible original application, a legible original or copy of the bill of sale, the original certificate of origin, and the state's fees to the Arizona Game and Fish Department, Watercraft Agent Representative, 5000 W. Carefree Highway, Phoenix, AZ 85086.
4. The state's fees shall be submitted by check or money order with the required documentation or electronically prior to the submission of the required documentation.

I. The Department shall accept online applications or prenumbered temporary certificate of number application forms provided to the watercraft dealer by the Department, as established under R12-4-502.

J. By the 10th day of each month, a watercraft dealer shall submit a report of activity for the previous month to the Department on a form furnished by the Department and available at the Department office listed under subsection (H)(3). The watercraft dealer shall submit the report whether or not any activity occurred during the reporting period. The report shall include all of the following:

1. Name and address of the watercraft dealer;
2. Department assigned watercraft agent number;
3. For each temporary certificate of number issued:
   a. Application number;
   b. Name of the purchaser;
   c. Hull identification number; and
   d. Date of issuance; and
4. A list of any voided or missing application numbers, with explanation.
5. A watercraft dealer who processes all transactions using the Department's online application system is exempt from subsection (J).

K. The Department may cancel the watercraft dealer's authorization and demand the return of or collect all supplies issued to the agent if the dealer does any one of the following:

1. Fails to comply with the requirements established under this Section;
2. Submits more than one check, draft, order, or electronic payment dishonored because of insufficient funds, payments stopped, or closed accounts to the Department within a calendar year;
3. Predates, postdates, alters, or provides or knowingly allows false information to be provided on or with an application for a temporary certificate of number;
4. Issues a temporary certificate of number for a used watercraft;
5. Falsifies the application for authorization as a watercraft agent; or 6. Falsifies the monthly report required by subsection (J).

L. Denial of a dealer's application to become a watercraft agent, or cancellation of watercraft agent status by the Department may be appealed to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 4511, effective

February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-510. Refund of Fees Paid in Error

A. The Department shall issue a refund for watercraft fees paid in error under the following circumstances:
1. The Department shall issue a refund for the watercraft registration renewal fee and, when applicable, the Nonresident Boating Safety Infrastructure fee when the registered owner has erroneously paid those fees twice for the same watercraft.
2. The Department shall issue a refund for the watercraft registration renewal fee and, when applicable, the Nonresident Boating Safety Infrastructure fee when the registered owner has erroneously paid those fees for a watercraft that has already been sold to another individual.

B. To request a refund of fees paid in error, the person applying for the refund shall surrender all of the following to the Department:
1. Original certificate of number;
2. Registration decals; and
3. Nonresident Boating Safety Infrastructure Decal, when applicable.

C. A person requesting a refund of fees under subsections (A)(1) or (A)(2) shall submit the request to the Department within 30 calendar days of the date the payment was received by the Department.

D. The Department shall not refund any late registration penalty fee.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-511. Personal Flotation Devices

A. For the purpose of this Section, “wear” means:
1. The personal flotation device is worn according to the manufacturer’s design or recommended use;
2. All of the device’s closures are fastened, snapped, tied, zipped, or secured according to the manufacturer’s design or recommended use; and
3. The device is adjusted for a snug fit.

B. The operator of a canoe, kayak, or other watercraft shall ensure the canoe, kayak, or other watercraft is equipped with at least one appropriately-sized, U.S. Coast Guard-approved, wearable personal flotation device that is in good and serviceable condition for each person on board the canoe, kayak, or other watercraft. The operator of a canoe, kayak, or other watercraft shall also ensure the wearable personal flotation devices on board the canoe, kayak, or other watercraft are readily accessible and available for immediate use. The following wearable personal flotation devices are approved by the U.S. Coast Guard:
1. Type I Personal Flotation Device: off-shore life jacket,
2. Type II Personal Flotation Device: near-shore buoyancy vest,
3. Type III Personal Flotation Device: flotation aid, and
4. Type V Special Use Device.

C. In addition to the personal flotation devices described under subsection (B), the operator of a watercraft that is 16 feet or more in length shall ensure the watercraft is also equipped with a U.S. Coast Guard-approved Type IV Personal Flotation Device: buoyant cushion, ring buoy, or horseshoe buoy. Canoes and kayaks are not subject to this subsection.

D. The operator of a watercraft shall ensure an individual twelve years of age or under on board a watercraft shall wear a U.S. Coast Guard approved type I, II or III personal flotation device whenever the watercraft is underway.

E. The operator of a personal watercraft shall ensure each individual aboard the personal watercraft is wearing a wearable personal flotation device approved by the U.S. Coast Guard whenever the personal watercraft is underway.

F. Subsections (B), (C), and (D) do not apply to the operation of a racing shell or rowing skull during competitive racing or supervised training, if the racing shell or rowing skull is manually propelled, recognized by a national or international association for use in competitive racing, and designed to carry and does carry only equipment used solely for competitive racing.

Historical Note

Amended effective May 26, 1978 (Supp. 78-3). Former Section R12-4-80 renumbered as Section R12-4-511 without change effective August 13, 1981 (Supp. 81-4). Amended effective May 27, 1992 (Supp. 92-2). 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 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-512. Fire Extinguishers Required for Watercraft

A. The operator of watercraft shall ensure all required fire extinguishers are readily accessible and available for immediate use.

B. As prescribed under A.R.S. § 5-332, an operator of a:

1. Watercraft less than 26 feet in length shall carry one U.S. Coast Guard-approved B-I type fire extinguisher on board if the watercraft has one or more of the following:
   a. An inboard engine,
   b. Closed compartments where portable fuel tanks may be stored,
   c. Double bottoms not sealed to the hull or which are not completely filled with flotation materials,
   d. Closed living spaces,
   e. Closed stowage compartments in which combustible or flammable materials are stored,
   f. Permanently installed fuel tanks (fuel tanks that cannot be moved in case of a fire or other emergency are considered permanently installed), and
   g. A fixed fire extinguishing system installed in the engine compartment.
2. Watercraft 26 feet to less than 40 feet shall carry on board the following equipment as designated and approved by the U.S. Coast Guard:
   a. At least two B-I type hand-portable fire extinguishers or at least one B-II type hand-portable fire extinguisher, or
   b. At least one B-I type approved hand-portable fire extinguisher if a fixed fire extinguishing system is installed in the engine compartment.
3. Watercraft 40 feet to not more than 65 feet shall carry on board the following equipment as designated and approved by the U.S. Coast Guard:
   a. At least three B-I type hand-portable fire extinguishers or at least one B-I and one B-II type hand-portable fire extinguishers, or
   b. At least two B-I type hand-portable fire extinguishers or at least one B-II type hand-portable fire extinguisher when a fixed fire extinguishing system is installed in the engine compartment.

ARTICLE 5. BOATING AND WATER SPORTS

Historical Note
Former Section R12-4-81 renumbered as Section R12-4-512 without change effective August 13, 1981 (Supp. 81-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-513. Watercraft Accident and Casualty Reports

A. The operator or owner of a watercraft involved in any collision, accident or other casualty resulting in injury, death, or property damage exceeding $500 shall submit the report required under A.R.S. § 5-349 to the Department. The report shall be made on a form furnished by the Department and provided by the law enforcement officer investigating the collision, incident, or other casualty. The operator or owner of the watercraft shall complete the form in full and clearly identify on the form any information that is either not applicable or unknown. The operator or owner of the watercraft submitting the report shall provide the following information:

1. The operator's personal information;
2. The owner's personal information;
3. The operator's hours of experience in operating watercraft;
4. The operator's amount of boating safety instruction;
5. Information on the watercraft involved;
6. Information on the accident;
7. Estimated cost of damage to the watercraft;
8. Whether the watercraft sank, and if so, information regarding the recovery of the watercraft;
9. Information regarding U.S. Coast Guard-approved personal flotation devices;
10. Information regarding fire extinguishers;
11. Personal information for operators and owners of each of the other watercraft involved in the accident;
12. Personal information for persons killed or injured in the accident;
13. Personal information for all passengers in the watercraft;
14. The location of passengers, skiers, and swimmers at the time of the accident;
15. Information regarding damage to property other than any of the watercraft involved;
16. Contact information for any witnesses other than passengers;
17. A diagram and narrative explaining the accident;
18. Contact information for the person completing the form;
19. The signature of the person completing the form;
20. The date the person completing the form submits the form to the Department; and
21. Any other information required by the Department to ensure compliance with 33 CFR 173.57.

B. The person completing the form shall deliver or mail the form to the Arizona Game and Fish Department, Law Enforcement Branch at 5000 W. Carefree Hwy, Phoenix, AZ 85086.

C. The operator or owner of a watercraft involved in any collision, accident or other casualty resulting in injury or death shall submit the report to the Department no later than 48 hours after the incident.

D. The operator or owner of a watercraft involved in any collision, accident or other casualty resulting only in property damage exceeding $500 shall submit the report to the Department no later than five days after the incident.

Historical Note

ARTICLE 5. BOATING AND WATER SPORTS

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-514. Liveries

A. As prescribed under A.R.S. § 5-371, a watercraft owned by a boat livery that requires registration and does not have the certificate of number on board shall be identified while in use by means of a receipt provided by the livery to the person operating the rented watercraft. The receipt shall contain the following information:
1. Business name and address of the livery as shown on the certificate of number,
2. Watercraft registration number as issued by the Department,
3. Beginning date and time of the rental period, and
4. Written acknowledgment on the receipt of compliance with the requirements prescribed under A.R.S. § 5-371, signed by both the livery operator or the livery's agent and the renter.

B. The person operating the rented watercraft shall carry the receipt and produce it upon request to any peace officer.

Historical Note

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-515. Display of AZ Numbers and Registration Decals

A. A person shall not use or operate, or grant permission to use or operate, a watercraft on the waters within the boundaries of this state unless such watercraft displays a valid number and current registration decal in the manner as established under subsection (B). This Section does not apply to undocumented watercraft displaying a valid temporary numbering certificate authorized under R12-4-509 or exempt under A.R.S. § 3-322.

B. The owner of a watercraft shall ensure the AZ number and registration decals are displayed as follows:
1. The AZ numbers shall:
   a. Be clearly visible and painted on or attached to each exterior side of the forward half of a non-removable portion of the watercraft;
   b. Be in a color that contrasts with the watercraft’s background color so as to be easily read from a distance;
   c. Include the letters “AZ” and the suffix, separated by a hyphen or equivalent space between the letters “AZ” and the suffix; and
   d. Read from left to right in well-proportioned block letters that are not less than three inches in height, excluding outline.
2. The registration decals shall be affixed three inches in front of “AZ” on both sides of the forward half of a non-removable portion of the watercraft.

C. On watercraft so constructed that it is impractical or impossible to display the AZ numbers in a prominent position on the forward half of the hull or permanent superstructure, the AZ numbers may be displayed on brackets or fixtures securely attached to the forward half of the watercraft.

D. Persons possessing a dealer watercraft certificate of number issued under A.R.S. § 5-322(F) shall visibly display the AZ numbers and validating registration decals as established under this Section, except that the numbers and decals may be printed or attached to temporary, removable signs that are securely attached to the watercraft being demonstrated.

E. Expired registration decals issued by any jurisdiction shall be covered or removed from the watercraft, so that only the current registration decals are visible.

F. Invalid watercraft AZ numbers and registration decals shall not be displayed on any watercraft. The owner of the watercraft shall surrender the AZ numbers and registration decals to the Department in compliance with R12-4-506(C).

Historical Note

Section R12-4-515 renumbered from R12-4-501 and amended effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-516. Watercraft Sound Level Restriction

A. A person shall not operate a watercraft upon the waters of this state if the watercraft emits a noise level that exceeds any of the following.

1. A noise level of 86 dB(A), measured at a distance of 50 feet or more from the watercraft on the "A" weighted scale of a sound level instrument that conforms to recognized industry standards and is maintained according to the manufacturer's instructions.
2. For engines manufactured:
   a. Before January 1, 1993, a noise level of 90 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice stationary sound level test SAEJ2005, revised July 2004 and containing no later editions or amendments; and
   b. On or after January 1, 1993, a noise level of 88 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice stationary sound level test SAEJ2005, revised July 2004 and containing no later editions or amendments; or
3. A noise level of 75 dB(A) measured as specified in the Society of Automotive Engineers Recommended Practice shoreline sound test SAEJ1970, revised September 2003 and containing no later editions or amendments.

B. The materials incorporated by reference in subsection (A) may be viewed at any Department office and are available for purchase from SAE International, 400 Commonwealth Dr, Warrendale, PA 15096-0001 or online at www.sae.org.

C. A measurement of noise level that is in compliance with this Section does not preclude the conducting of a test or multiple tests of noise levels.

D. A peace officer authorized to enforce the provisions of this Section who has reason to believe a watercraft is being operated in violation of the noise levels established in this Section may direct the operator of the watercraft to submit the watercraft to an onsite test to measure noise level.

E. An operator of a watercraft who receives a request from a peace officer to test the noise level of the watercraft under subsection (D) shall allow the watercraft to be tested. If, based on a measurement or test to determine the noise level of a watercraft administered under this Section, the noise level of the watercraft exceeds one or more of the decibel level standards in subsection (A), the operator of the watercraft shall take immediate measures to correct the violation as prescribed under A.R.S. § 5-391(C).

F. This Section shall not apply to watercraft operated under permits issued in accordance with A.R.S. § 5-336(C).

Historical Note

Former Section R12-4-82 renumbered as Section R12-4-516 without change effective August 13, 1981 (Supp. 81-4). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

ARTICLE 5. BOATING AND WATER SPORTS

R12-4-517. Watercraft Motor and Engine Restrictions

A. A person operating a motorized watercraft on the following waters shall use an electric motor only:

1. Ackre Lake
2. Bear Canyon Lake
3. Bunch Reservoir
4. Carnero Lake
5. Chaparral Park Lake
6. Cluff Ponds
7. Coconino Reservoir
8. Coors Lake
9. Dankworth Pond
10. Dogtown Reservoir
11. Fortuna Lake
12. Goldwater Lake
13. Granite Basin Lake
14. Horsethief Basin Lake
15. Hulsey Lake
16. J.D. Dam Lake
17. Knoll Lake
18. Lee Valley Lake
19. McKellips Park Lake
20. Pratt Lake
21. Quigley Lake
22. Redondo Lake
23. Riggs Flat Lake
24. Roper Lake
25. Santa Fe Lake
26. Scott's Reservoir
27. Sierra Blanca Lake
28. Soldier Lake (in Coconino County)
29. Stehr Lake
30. Stoneman Lake
31. Tunnel Reservoir
32. Whitehorse Lake
33. Willow Valley Lake
34. Woodland Reservoir
35. Woods Canyon Lake

B. A person operating a motorized watercraft on the following waters shall use only a single electric motor or a single gasoline engine not exceeding 10 manufacturer-rated horsepower:

1. Arivaca Lake
2. Ashurst Lake
3. Becker Lake
4. Big Lake
5. Black Canyon Lake
6. Blue Ridge Reservoir
7. Cataract Lake
8. Chevelon Canyon Lake
9. Cholla Lake Hot Pond

10. Concho Lake
11. Crescent Lake
12. Fool Hollow Lake
13. Kaibab Lake
14. Kinnikinick Lake
15. Little Mormon Lake
16. Lower Lake Mary
17. Luna Lake
18. Lynx Lake
19. Marshall Lake
20. Mexican Hay Lake
21. Nelson Reservoir
22. Parker Canyon Lake
23. Peña Blanca Lake
24. Rainbow Lake
25. River Reservoir
26. Show Low Lake
27. Whipple Lake
28. White Mountain Lake (in Apache County)
29. Willow Springs Lake

C. A person shall not operate a watercraft on Frye Mesa Reservoir, Rose Canyon Lake, or Snow Flat Lake, except as authorized under subsection (D).

D. A person who possesses a valid use permit issued by the U.S. Forest Service may operate a non-motorized watercraft only on Rose Canyon Lake on any Tuesday, Wednesday, or Thursday during June and July from 9:30 a.m. to 4:30 p.m. Mountain Time Zone. This subsection does not exempt the person from complying with all applicable requirements imposed by federal or state laws, rules, regulations, or orders.

E. This Section does not apply to watercraft of governmental agencies or to Department-approved emergency standby watercraft operated by lake concessionaires if operating to address public safety or public welfare.

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Amended as an emergency effective July 9, 1976 (Supp. 76-4). Amended effective June 4, 1979 (Supp. 79-3). Former Section R12-4-89 renumbered as Section R12-4-517 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A) and (C) effective December 17, 1981 (Supp. 81-6). Amended effective December 28, 1982 (Supp. 82-6). Amended subsections (A) through (C) effective December 4, 1984 (Supp. 84-6). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by exempt rulemaking at 17 A.A.R. 1189, effective May 24, 2011 (Supp. 11-2). Subsection (A)(9) corrected clerical error (Supp. 11-3).

R12-4-518. Regattas

A. When a regatta permit is issued by the Coast Guard, the person in control of the regatta shall at all times be responsible for compliance with the stipulations as prescribed within the regatta permit. Such stipulations may include but not be limited to:

1. A specified number of patrol or committee boats and identified as such.
2. Availability of emergency medical services.

3. Spectator control if there exists a danger that life or property is in jeopardy.

B. Non-compliance with any stipulation of an authorized permit which jeopardizes the public welfare shall be cause to terminate the regatta until the person in control or a person designated by the one in control satisfactorily restores compliance.

C. When a regatta applicant is informed in writing by the Coast Guard that a permit is not required, such regatta may take place, but shall not relieve the regatta sponsor of any responsibility for the public welfare or confer any exemption from state boating and watersports laws and rules.

D. The regatta sponsor and all participants shall comply with aquatic invasive species requirements established under A.R.S Title 17, Chapter 2, Article 3.1 and 12 A.A.C. 4, Article 11.

Historical Note

Adopted effective March 5, 1982 (Supp. 82-2). Amended by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1).

R12-4-519. Reciprocity

As authorized under A.R.S. § 5-322(E), all watercraft currently numbered or exempt from numbering under the provisions of their state of principal operation are exempt from numbering for a period of 90 days after entering this state.

Historical Note

Section R12-4-519 renumbered from R12-4-503 and amended effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-520. Arizona Uniform State Waterway Marking System

The Arizona uniform state waterway marking system is the same as that prescribed under 33 CFR 62, revised July 1, 2004, which is incorporated by reference in this Section. The incorporated material is available at any Department office, online at www.gpoaccess.gov, or it may be ordered from the U.S. Government Printing Office, Stop: IDCC, Washington, D.C. 20401. This Section does not include any later amendments or editions of the incorporated material.

Historical Note

Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-521. Placing or Tampering with Regulatory Markers or Aids to Navigation

A. A person shall not mark the waterways or their shorelines in this state with mooring buoys, regulatory markers, aids to navigation, or other types of permitted waterway marking devices as established under R12-4-520, without authorization from the governmental agency or the private interest having jurisdiction on such waters.

B. A person shall not moor or fasten a watercraft to any marker not intended for mooring, or willfully damage, tamper with, remove, obstruct, or interfere with any aid to navigation, regulatory marker or other type of permitted waterway marking devices as established under R12-4-520, except in the performance of authorized maintenance responsibilities or as authorized under R12-4-518 or R12-4-522.

Historical Note

Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-522. Establishment of Controlled-Use Markers

A. If a lawful jurisdiction has not exercised its authority to control watercraft under A.R.S. § 5-361, or if waters are directly under the jurisdiction of the Commission, the Department has the authority to control watercraft within that jurisdiction in accordance with the following requirements:
1. The Department shall place controlled-use markers only where controlled operation of watercraft is necessary to protect life, property, or habitat, and shall move or remove the markers only if the need for the protection changes.
2. The Department shall ensure restrictions imposed are clearly communicated to the public as prescribed by rule or by wording on the markers.

B. A governmental agency, excluding federal agencies with jurisdiction over federal navigable waterways, shall report to the Department when controlled-use markers have been placed or removed, unless the establishment or removal of markers is for a period of less than 30 days. The report shall be made within 30 days of establishment or removal of any controlled-use markers and shall include the:
1. Report type,
2. Purpose of markers,
3. Placement of markers, and
4. Whether the markers are expected to be permanent or temporary.

C. Any person or government agency may request establishment, change, or removal of controlled-use markers on waters under the jurisdiction of the Commission or on waters not under the jurisdiction of another agency by submitting a written request providing the reasons for the request to the Arizona Game and Fish Department, 5000 W. Carefree Hwy, Phoenix, AZ 85086. The Department shall either approve or deny the request within 60 days of receipt.

D. A person may appeal the Department's denial of a request to the Commission as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-523. Controlled Operation of Watercraft

A. A person shall not operate any watercraft, or use any watercraft to tow a person on water skis, a surfboard, inflatable device, or similar object, device or equipment in a manner contrary to the area restrictions imposed by lawfully placed controlled-use markers, except for:
1. Law enforcement officers acting within the scope of their lawful duties;
2. Persons involved in rescue operations;
3. Persons engaged in government-authorized activities; and
4. Persons participating in a regatta, during the time limits of the event only.

B. The exemptions listed under subsection (A) do not authorize any person to operate a watercraft in a careless, negligent, or reckless manner as prescribed under A.R.S. § 5-341.

Historical Note

Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-524. Water Skiing

An operator of a watercraft shall ensure that the observer of a water skier is physically capable and mentally competent to act as an observer and at least 12 years of age.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4).

R12-4-525. Revocation of Watercraft Certificate of Number, AZ Numbers, and Decals

A. For the purposes of this Section, "person" has same meaning as prescribed under A.R.S. § 5-301.

B. Upon notice of conviction of a person under A.R.S. § 5-391(G), the Department shall revoke for a period not to exceed two years the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals of any Arizona registered watercraft owned by that person and involved in the violation.

C. Upon notice of conviction of a person under A.R.S. § 5-391(H), the Department shall revoke for a period not to exceed one year the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals for any Arizona registered watercraft owned by that person and involved in the violation.

D. Upon receiving notice of conviction, the Department shall serve notice under A.R.S. §§ 41-1092.03 and 41-1092.04 on the person convicted that the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals of watercraft the person owns are subject to revocation.

E. A person whose certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals are subject to revocation may request a hearing. The person shall submit a written request to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Hwy, Phoenix, AZ 85086, within 30 calendar days of receiving the notice described under subsection (D).

F. If the person requests a hearing, the Department shall, within 60 days of receiving the request, schedule a hearing as prescribed under A.R.S. § 41-1092.05.

G. After a final decision to revoke the person's certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals, the Department shall serve upon the person an Order of Revocation. Within 15 calendar days of receipt of the notice, the person shall surrender to the Department the revoked certificates of number and decals.

H. The revocation of the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals does not affect the legal title to or any property rights in the watercraft. Upon receipt of an application to transfer watercraft registration by the new watercraft owner, the Department shall terminate the revocation and allow the owner to transfer the owner's entire interest in the watercraft if the Department is satisfied the transfer is proposed in good faith and not for the purpose of defeating the revocation.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-526. Unlawful Mooring

A. A person, as defined under A.R.S. § 5-301, shall not moor, anchor, fasten to the shore, or otherwise secure a watercraft in any public body of water for more than 14 days within any period of 28 consecutive days unless:
1. The person moves the watercraft at least 25 nautical miles from its previous location,
2. The waters are a special anchorage area as defined under A.R.S. § 5-301,
3. Authorized for private dock or moorage, or
4. Authorized by the government agency or private interest having jurisdiction over the waters.

B. The 14 day limit may be reached through either a number of separate moorings or 14 days of continuous overnight occupation during the 28 day period.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-527. Transfer of Ownership of a Towed Watercraft

A. For the purpose of this Section, "towed watercraft" means a watercraft that has been impounded by and is in the possession of a towing company located in this state.

B. At the time a towing company requests watercraft registration information prescribed under A.R.S. § 5-324 for a towed watercraft, the towing company shall present the towed watercraft to the closest Department office for identification if there is no discernible hull identification number or state-issued registration number.

C. A towing company seeking to transfer the ownership of a towed watercraft shall submit all of the following to the Director of the Department:
1. Evidence of compliance with notification requirements prescribed under A.R.S. § 5-399;
2. A report on a form furnished by the Department and available at any Department office. The form shall include all of the following information:
   a. Name of towing company;
   b. Towing company's business address;
   c. Towing company's business telephone number;
   d. Towing company's Arizona Department of Public Safety tow truck permit number;
   e. Towed watercraft's hull identification number, if known;
   f. Towed watercraft's state-issued registration number, registration decal, and year of expiration, if known;
   g. Towed watercraft's trailer license number, if available;
   h. State and year of trailer registration, if available;
   i. Towed watercraft's color and manufacturer, if known;
   j. Towed watercraft's condition, whether intact, stripped, damaged, or burned, along with a description of any damage;
   k. Date the watercraft was towed;
   l. Location from which the towed watercraft was removed;
   m. Entity that ordered the removal of the towed watercraft, and if a law enforcement agency, include officer badge number, jurisdiction, and copy of report or towing invoice;
   n. Location where the towed watercraft is stored; and
   o. Name and signature of towing company's authorized representative; and
3. Twenty-five dollar application fee authorized under A.R.S. § 5-399.03(2).

D. If the Department is unsuccessful in its attempt to identify or contact the registered owner or lienholder of the towed watercraft and has determined the towed watercraft is not stolen, the towing company shall follow the application procedures established under A.R.S. § 5-399.02(B) and R12-4-502 to register the towed watercraft.

ARTICLE 5. BOATING AND WATER SPORTS

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1241, effective May 26, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking repealed under A.R.S. § 41-1026(E) and permanent new Section made by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-528. Watercraft Checkpoints

A. A law enforcement agency may establish a watercraft checkpoint to ensure public safety on state waterways, to screen for unsafe or impaired watercraft operators, or to gather demographic, statistical, and compliance information related to watercraft activities.

B. An individual may be required to perform the following during a watercraft stop or at a watercraft checkpoint:
1. Stop or halt as directed when being hailed by a peace officer or entering the established checkpoint boundary as prescribed under A.R.S. § 5-391, and
2. Provide evidence of required safety equipment and registration documentation prescribed under A.R.S. Title 5, Chapter 3, Boating and Water Sports.

C. This Section does not limit any state peace officer's authority to conduct routine watercraft patrol efforts prescribed under A.R.S. Title 5, Chapter 3, Boating and Water Sports.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal

A. Before placing that watercraft on the waterways of this State, a nonresident owner of a recreational watercraft who establishes this State as the state of principal operation shall pay the applicable Nonresident Boating Safety Infrastructure Fee (NBSIF) as authorized under A.R.S. § 5-327:
1. Twelve feet and less: $80
2. Twelve feet one inch through sixteen feet: $88
3. Sixteen feet one inch through twenty feet: $192
4. Twenty feet one inch through twenty-six feet: $224
5. Twenty-six feet one inch through thirty-nine feet: $253
6. Thirty-nine feet one inch through sixty-four feet: $286
7. Sixty-four feet one inch and over: $429
8. For the purposes of this subsection, the length of the motorized watercraft shall be measured in the same manner prescribed under A.R.S. § 5-321(C).

B. The nonresident recreational watercraft owner shall carry and display proof of payment of the fee while the watercraft is underway, moored, or anchored on the waterways of this State. Acceptable proof of payment includes any one of the following:
1. A current Arizona Watercraft Certificate of Number indicating the NBSIF was paid,
2. A current Arizona Watercraft Temporary Certificate of Number indicating the NBSIF was paid,
3. A current Arizona Watercraft Registration Decal indicating the NBSIF was paid, or
4. A current Arizona Nonresident Boating Safety Infrastructure Decal.

C. The Nonresident Boating Safety Infrastructure Decal shall be affixed in front of the Arizona Watercraft Registration Decal on both sides of the forward half of the watercraft.

Historical Note
Adopted effective October 22, 1976 (Supp. 76-5). Former Section R12-4-90 renumbered as Section R12-4-529 without change effective August 13, 1981 (Supp. 81-4). Repealed effective May 27, 1992 (Supp. 92-2). New Section made by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-530. Reserved through R12-4-540.

R12-4-541. Repealed

Historical Note
Former Section R12-4-88 renumbered as Section R12-4-541 without change effective August 13, 1981 (Supp. 81-4). Amended effective April 5, 1985 (Supp. 85-2). Repealed effective May 27, 1992 (Supp. 92-2).

R12-4-542. Repealed

Historical Note
Adopted as an emergency effective August 31, 1981, valid for ninety (90) days after filing pursuant to A.R.S. § 41-1003 (Supp. 81-4). Former Section R12-4-542 adopted as an emergency now adopted as permanent with further amendment effective March 5, 1982 (Supp. 82-2). Amended effective March 29, 1985 (Supp. 85-2). Repealed effective May 27, 1992 (Supp. 92-2).

R12-4-543. Repealed

Historical Note
Adopted effective January 29, 1982 (Supp. 82-1). Amended effective August 19, 1983 (Supp. 83-4). Amended subsection (A) effective July 3, 1984 (Supp. 84-4). Amended effective March 29, 1985 (Supp. 85-2). Correction, subsection (A), paragraph (2) as certified effective March 29, 1985 (Supp. 86-3). Amended subsection (A) effective June 18, 1987 (Supp. 87-2). Amended as an emergency effective May, 15, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Amended and readopted as an emergency effective August 25, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency expired. Emergency amendments adopted with changes effective January 5, 1990 (Supp. 90-1). Repealed effective May 27, 1992 (Supp. 92-2).

R12-4-544. Repealed

Historical Note
Adopted effective August 19, 1983 (Supp. 83-4). Amended subsection (A) effective July 3, 1984 (Supp. 84-4). Amended subsection (A) effective June 18, 1987 (Supp. 87-2). Repealed effective May 27, 1992 (Supp. 92-2).

R12-4-545. Repealed

Historical Note

ARTICLE 5. BOATING AND WATER SPORTS

Adopted effective April 5, 1985 (Supp. 85-2). Amended by emergency effective May 18, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency amendments readopted effective August 28, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Repealed effective May 27, 1992 (Supp. 92-2).

TITLE 5 - AMUSEMENTS AND SPORTS,
CHAPTER 3 - BOATING AND WATER SPORTS

5-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial motorized watercraft" means a motorized watercraft that carries passengers or property for a valuable consideration that is paid to the owner, charterer, operator or agent or to any other person interested in the watercraft.
2. "Commission" means the Arizona game and fish commission.
3. "Department" means the Arizona game and fish department.
4. "Documented watercraft" means any watercraft currently registered as a watercraft of the United States pursuant to 46 Code of Federal Regulations part 67.
5. "Domicile" means a person's true, fixed and permanent home and principal residence, proof of which may be demonstrated as prescribed by rules adopted by the commission.
6. "Motorboat" means any watercraft that is not more than sixty-five feet in length and that is propelled by machinery whether or not such machinery is the principal source of propulsion.
7. "Motorized watercraft" means any watercraft that is propelled by machinery whether or not the machinery is the principal source of propulsion.
8. "Nonresident" means a citizen of the United States or an alien person who is not domiciled in this state and who is not a resident as defined in this section.
9. "Operate" means to operate or be in actual physical control of a watercraft while on public waters.
10. "Operator" means a person who operates or is in actual physical control of a watercraft.
11. "Person" includes any individual, firm, corporation, partnership or association, and any agent, assignee, trustee, executor, receiver or representative thereof.
12. "Public waters" means any body of water that is publicly owned or that the public is permitted to use without permission of the owner upon which a motorized watercraft can be navigated, including that part of waters that is common to interstate boundaries and that is within the boundaries of this state.
13. "Resident" means a person who is either:
    (a) A member of the armed forces of the United States on active duty and stationed in this state for a period of thirty days immediately before the date of application for a watercraft decal.
    (b) A member of the armed forces of the United States on active duty and stationed in another state or another country and who lists this state as that member's home of record at the time of an application for a watercraft decal.
    (c) Domiciled in this state for at least six consecutive months immediately before the date of the application for a watercraft decal and who does not claim residency for any purpose in any other state or country.

14. "Revocation" means invalidating the certificate of number, numbers and annual validation decals issued by the department to a watercraft and prohibiting the operation of the watercraft on the waters of this state during a period of noncompliance with this chapter.
15. "Sailboard" means any board of less than fifteen feet in length which is designed to be propelled by wind action upon a sail for navigation on the water by a person operating the board.
16. "Special anchorage area" means an area set aside and under the control of a federal, state or local governmental agency, or by a duly authorized marina operator or concessionaire for the mooring, anchoring or docking of watercraft.
17. "State of principal operation" means the state where a watercraft is primarily used, navigated or employed.
18. "Underway" means a watercraft that is not at anchor, is not made fast to the shore or is not aground.
19. "Undocumented watercraft" means any watercraft which does not have and is not required to have a valid marine document as a watercraft of the United States.
20. "Wakeless speed" means a speed that does not cause the watercraft to create a wake, but in no case in excess of five miles per hour.
21. "Watercraft" means any boat designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water, or as may be defined by rule of the commission.
22. "Waterway" means any body of water, public or private, upon which a watercraft can be navigated.

5-302. Application of chapter

A. This chapter applies to all watercraft operating on all of the waterways of this state, including that part of waters that is common to interstate boundaries and that is within the boundaries of this state, excluding vessels owned by agencies of the federal government in performance of their official duties.

B. Section 5-391, subsections G and H and sections 5-392 and 5-393 apply to all watercraft in this state, whether or not operating on waterways of this state, and includes watercraft operating on waterways that are part of water that is common to interstate boundaries and that is within the boundaries of this state.

5-311. Powers and duties of the commission

A. The commission may:

1. Make rules and regulations required to carry out in the most effective manner all the provisions of this chapter.
2. Modify the equipment requirements in conformity with the provisions of the federal navigation laws or with the navigation regulations promulgated by the United States coast guard.

3. Prescribe additional equipment requirements not in conflict with federal navigation laws or regulations.
4. Provide for a uniform waterway marking system and establish, operate and maintain aids to navigation and regulatory markers on the waters of this state.
5. Make regulations for the registration and operation of watercraft.
6. Prescribe regulations for the issuance of permits for motor boat races, regattas or other watercraft events.
7. Administer the law enforcement and boating safety program on the state level, and accept federal grants for the purpose of boating safety and related enforcement.

B. Regulations established under this section shall not be in conflict with those prescribed by the United States coast guard.

5-321. Numbering; registration fees; exemption from taxation; penalty; procedures

A. Except as provided in section 5-322, the owner of each motorized watercraft requiring numbering by this state shall file an application for a registration number with the department, or its agent, on forms approved by the department. Except as provided by rule adopted by the commission, the application shall be signed by the owner of the motorized watercraft and shall be accompanied by a registration fee. After the effective date of this amendment to this section, the commission shall establish by rule a registration fee for each motorized watercraft requiring numbering by this state.

B. Pursuant to article IX, section 16, Constitution of Arizona, watercraft are exempt from ad valorem property tax and from license taxes in lieu of property tax.

C. The length of the motorized watercraft shall be measured from the most forward part of the bow excluding the bowsprit or jibboom, over the centerline to the rearmost part of the transom excluding sheer, outboard motor, rudder, handles or other attachments.

D. The commission may assess an additional registration fee, to be collected at the same time and in the same manner as the registration fee imposed by subsection A of this section. The amount of the additional fee shall be determined by the commission and may be imposed in different amounts with respect to resident and nonresident owners. An additional registration fee under this subsection is to be used solely for the purpose of the lower Colorado river multispecies conservation program under section 48-3713.03.

E. On receipt of the application in approved form with the applicable fees, the department or its agent shall enter the application on the records of its office and issue to the applicant two current annual decals and a certificate of number stating the number issued to the watercraft and the name and address of the owner. The owner shall display the assigned number and the current annual decals in such manner as may be prescribed by rules of the commission. The number and decals shall be

maintained in legible condition. The certificate of number or commission approved proof of valid certificate of number, except as provided in section 5-371, shall be available at all times for inspection by a peace officer whenever the watercraft is in operation. No number issued by another state or the United States coast guard, unless granted exemption or exception pursuant to this chapter, shall be displayed on the watercraft.

F. No person may operate a motorized watercraft on the waterways of this state unless the watercraft displays the assigned number and current annual decals or the person is in possession of a valid thirty-day temporary registration as prescribed by this article.

G. No motorized watercraft shall be purchased, sold or otherwise transferred without assignment by the owner of the current numbering certificate or other documentation as may be prescribed by rules of the commission. Within fifteen days after such transfer, the person to whom such transfer is made shall make application to the department to have the motorized watercraft registered in the person's name by the department, for which the department shall charge a transfer fee as prescribed in rule by the commission. The department shall not issue or transfer a numbering certificate for a motorized watercraft to a person who is subject to the use tax under title 42, chapter 5, article 4 unless the applicable tax has been paid as shown by a receipt from the collecting officer. Persons doing business as marine dealers and licensed as such by this state are not required to register in their name any watercraft in their possession that may be offered for resale.

H. In the event of the loss or destruction of the certificate of number or annual decal, the department shall issue a duplicate to the owner on payment of a fee as prescribed in rule by the commission.

I. The department may issue any certificate of number directly or may authorize any person to act as agent for the issuance of the certificate of number in conformity with this chapter and with any rules of the commission. An agent that contracts with the commission to renew certificates of number by telecommunication may impose additional fees for the services as provided in the contract.

J. The owner shall furnish to the department notice of the transfer of all or any part of the owner's interest other than the creation of a security interest in a motorized watercraft numbered in this state pursuant to this chapter or of the destruction or abandonment of such watercraft within fifteen days. Such transfer, destruction or abandonment shall terminate the certificate of number of such watercraft, except that in the case of a transfer of a part interest that does not affect the owner's right to operate such watercraft, the transfer shall not terminate the certificate of number.

K. Any holder of a certificate of number shall notify the department within fifteen days if the holder's address no longer conforms to the address appearing on the certificate and, as a part of such notification, shall furnish the department with the holder's new address. The commission may provide in its rules for the surrender of the certificate bearing the former address and its replacement with a

certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

L. On renewal of any motorized watercraft registration that has not been renewed by the current expiration date, the department shall assess a penalty unless the watercraft ownership has been transferred and the watercraft was not registered subsequent to the expiration date. The commission shall establish the penalty by rule. If more than twelve months have lapsed since the expiration date of the last registration or renewal, the penalty and back fees are waived.

5-321.01. Staggered watercraft registration; rules

A. The commission shall establish a system of staggered registration on a monthly basis in order to distribute the work of registering watercraft as uniformly as practicable throughout the twelve months of the calendar year.

B. All watercraft registrations provided for in this article expire in accordance with the schedules established by the commission. The commission may set the number of renewal periods within a month from one each month to one each day depending on which system is most economical and best accommodates the public.

C. The commission, in order to initiate the staggered registration system, may register a watercraft for a period of greater or less than twelve months up to a period of thirty-six months. If a registration period is set for a period other than twelve months the commission may prorate the registration fee.

D. The commission shall adopt rules necessary to accomplish the purposes of this section.

5-322. Motorized watercraft to be numbered; exceptions

A. All motorized watercraft whether underway, moored or anchored on the waters within the boundaries of the state shall be numbered in accordance with this chapter or rules of the commission in accordance with the federally approved numbering system except:

1. Foreign watercraft temporarily using the waters of the state.
2. Military or public vessels of the United States, except recreational type public vessels.
3. Watercraft used solely as lifeboats.
4. Undocumented watercraft operating under a valid temporary certificate issued pursuant to rules adopted by the commission.
5. Documented watercraft numbered in accordance with the regulations of the United States coast guard.

B. Motorized watercraft owned and operated exclusively by the state or by any political subdivision of the state shall be numbered, but no registration fee shall be paid on the watercraft.

C. All owners of motorized watercraft when in the course of interstate operation displaying a current and valid number issued under an approved federal numbering system of the United States coast guard, a state, the Commonwealth of Puerto Rico, the Virgin Islands, Guam or the District of Columbia shall register such watercraft with the department before the expiration of the reciprocity period prescribed by rules of the commission.

D. All motorized watercraft, when in the course of interstate operation and not required to be numbered in their state of principal operation, shall comply with the requirements of subsection C of this section.

E. When this state becomes the new state of principal operation of a motorized watercraft displaying a current number issued under a federally approved numbering system, the validity of such number shall be recognized for a period of ninety days. On expiration of the ninety-day period and before any subsequent use, the owner shall number any motorized watercraft pursuant to section 5-321.

F. Each dealer or manufacturer in this state engaged in the sale of motorized watercraft using the watercraft for demonstration shall obtain one or more dealer watercraft certificates of number with the current validating decals. Applications, fees for each certificate of number and accompanying current decals, renewal and display of certificates of number shall be as prescribed in this chapter or by rules of the commission.

5-323. Disposition of fees

Each month monies received from the registration and infrastructure fees received under this chapter for the numbering of watercraft shall be deposited, pursuant to sections 35-146 and 35-147, in the watercraft licensing fund. Each month, the department shall distribute the monies as follows:

1. All revenues collected pursuant to section 5-321, subsection A and section 5-326 shall be allocated as follows:
   (a) Sixty-five per cent shall be deposited in the watercraft licensing fund. The watercraft licensing fund is to be used by the department for administering and enforcing this chapter, providing an information and education program relating to boating and boating safety and administering any aquatic invasive species program established under this title or title 17. These monies are subject to legislative appropriation.
   (b) Thirty-five per cent of such revenues shall be further allocated as follows:
      (i) Fifteen per cent to the state lake improvement fund to be used as prescribed by section 5-382.
      (ii) Eighty-five per cent to the law enforcement and boating safety fund to be used as prescribed by section 5-383.
2. All revenues collected from any additional registration fees collected pursuant to section 5-321, subsection C shall be paid to an account designated by a multi-county water conservation district

established under title 48, chapter 22 to be used solely for the lower Colorado river multispecies conservation program and for no other purpose.

5-324. Public records; identification of requester; supplying information by mail; records custodians; certification of records

A. All records of the department made or kept pursuant to this article are public records.

B. The department shall furnish information or copies from the records kept pursuant to this section subject to sections 39-121.01 and 39-121.03.

C. Persons requesting a copy of a public record pursuant to this section shall identify themselves and state the reason for making the request. The department shall verify the name and address of the person making the request by requiring the person to produce necessary information to ensure that the information given is true and correct.

D. The department shall not divulge any information from a watercraft registration record unless the person requesting the information provides the following:

1. The name of the owner.
2. The hull identification number of the watercraft.
3. The department issued number assigned to the watercraft.

E. The procedures required by subsections C and D of this section do not apply to:

1. This state or any of its departments, agencies or political subdivisions.
2. A court.
3. A law enforcement officer.
4. A licensed private investigator.
5. Financial institutions and enterprises under the jurisdiction of the department of financial institutions or a federal monetary authority.
6. The federal government or any of its agencies.
7. An attorney admitted to practice in this state who alleges the information is relevant to any pending or potential court proceeding.
8. An operator of a self-service storage facility located in this state who alleges both of the following:
   (a) That the watercraft on which the operator is requesting the record is in the operator's possession.
   (b) That the record is requested to allow the operator to notify the registered owner and any lienholders of record of the operator's intent to foreclose its lien and to sell the watercraft.
9. A towing company located in this state that alleges both of the following:

(a) That the watercraft on which the towing company is requesting the record is in the towing company's possession.

(b) That the record is requested to allow the towing company to notify the registered owner and any lienholders of record, if known, of the towing company's intent to sell the watercraft.

10. An insurance company.

F. The department may supply the requested information by mail or telecommunications.

G. The director may designate as custodian of the department's public records those department employees the director deems necessary. If a public record of the department has been certified by a records custodian and authenticated as required under proof of records (records of public officials), rules of civil procedure and the rules of evidence for courts in this state, it is admissible in evidence without further foundation.

H. Notwithstanding subsection D of this section, information may be supplied for commercial purposes, as defined in section 39-121.03, if the information is transmitted in a machine readable form such as computer magnetic tape to the person making the request.

I. The department shall maintain for a period of at least one year a file of requests for information that shall be maintained by the name of the person whose record was requested, except those requests made by government agencies.

5-326. Nonresidents; registration; payment of fees; exemption

A. A nonresident owner of a watercraft who establishes this state as the state of principal operation shall register and number that watercraft pursuant to this article and pay an additional boating safety infrastructure fee assessed pursuant to section 5-327 before placing that watercraft on the waterways of this state.

B. A member of the armed forces of the United States who is on active duty and stationed in this state for a period of at least thirty days immediately before applying for watercraft registration is exempt from this section.

C. The owner shall carry and display proof of payment of the fee required by this section in a manner prescribed by the commission while the watercraft is underway, moored or anchored on the waterways of this state.

D. Subsection A of this section does not apply to nonrecreational or commercial motorized watercraft.

5-327. Nonresident boating safety infrastructure fees

A. In accordance with section 5-326, the commission shall assess a nonresident boating safety infrastructure fee for each watercraft registered in this state by a nonresident as defined in section 5-

301. The fees assessed pursuant to this section shall be paid in addition to the fees required pursuant to section 5-321.

B. For the purposes of section 5-326, subsection A, the commission shall establish nonresident boating safety infrastructure fees. After the effective date of this amendment to this section, the commission shall establish by rule a nonresident boating safety infrastructure fee for each watercraft registered in this state by a nonresident.

C. The length of the motorized watercraft shall be measured in the same manner prescribed in section 5-321, subsection C.

D. Unless the person or watercraft qualifies for an exemption pursuant to section 5-326, no person who is subject to this section shall operate or grant permission to operate a watercraft within the boundaries of this state unless that watercraft displays a valid nonresident boating safety infrastructure decal in conformance with the rules adopted pursuant to section 5-326.

5-328. Fee limitation

The department may establish fees pursuant to sections 5-321, 5-322 and 5-327, but the total amount of fees collected in any fiscal year may not exceed fifty per cent more than the amount appropriated from the watercraft licensing fund for fiscal year 2012-2013.

5-331. Personal flotation devices; exceptions

A. All watercraft, except sailboards, shall carry United States coast guard approved personal flotation devices of the type and category prescribed by regulations of the commission. There shall be one such device in good and serviceable condition for each person on board and so placed as to be readily accessible for immediate use.

B. Any person being towed behind a watercraft shall wear a buoyant belt or personal flotation device while being towed except for a performer engaged in a professional exhibition.

C. A child twelve years of age or under on board a watercraft shall wear a United States coast guard approved type I, II or III personal flotation device whenever the watercraft is underway.

D. The provisions of subsection C shall not apply to small passenger vessels that are not for hire on navigable waters, that maintain a coast guard certificate of inspection and that are being operated by United States coast guard licensed pilots within a distance of one-fourth mile from the nearest shore as a means of transporting passengers and when the duration of time the vessel is underway on the water does not exceed ten minutes.

5-332. Fire extinguishers

A. All watercraft, unless exempted by the commission, carrying as fuel any volatile liquid having a flash point of one hundred ten degrees Fahrenheit or less shall have aboard a readily accessible United States coast guard approved fire extinguisher in a condition available for immediate and effective use.

B. All watercraft over twenty-six feet in length and carrying as fuel any volatile liquid having a flash point of one hundred ten degrees Fahrenheit or less shall have aboard such fire extinguishers as may be prescribed or approved by the regulations of the United States coast guard.

5-336. Muffling devices

A. Every motor driven watercraft shall at all times be equipped with effective equipment, in good working order and in constant operation, to prevent excessive or unusual noise except as provided in subsection C.

B. It is not the intent of this section to prohibit the use of any type of exhaust system or exhaust device, including those systems and devices which do not discharge water with the exhaust gases, if such system or device complies with subsection A of this section.

C. All watercraft actually competing in a regatta, boat race or official trials for speed records, and within the time limits authorized by the sanctioning body of such event are exempt from this section. Permits designating place and time limits are required and shall be issued by the department prior to the testing of watercraft on the water when sufficient evidence is provided by the applicant that such watercraft is actually entered in an event sanctioned by a national or regional organization having jurisdiction over the event.

5-341. Negligent operation of watercraft or water skis; restriction in operation of watercraft; violation; classification

A. No person shall operate a watercraft in a careless, reckless or negligent manner.

B. A person shall not operate a watercraft while allowing a person to ride on the gunwales, the transom or the decked over bow of a watercraft propelled by machinery operating in excess of wakeless speed except if:

1. That portion of the watercraft was designed and constructed for the purpose of carrying passengers at all speeds.
2. The watercraft is being maneuvered for anchoring, mooring or casting off moorings.

C. No watercraft shall be operated with a passenger or passengers on the bow in such a manner as to obstruct the view of the operator.

D. No person on water skis, a surfboard or a similar contrivance shall behave in a careless, reckless or negligent manner.

E. Except in case of emergency no person under the age of twelve years may operate a watercraft propelled by a motor of greater than eight horsepower unless the person's parent or legal guardian or at least one person who is eighteen years of age or older is present on the watercraft.

F. Except as provided in subsection E, it is unlawful for any person to allow another person under the age of twelve to operate a motor-powered watercraft.

G. A person violating subsection A, B, C or D is guilty of a class 2 misdemeanor.

5-343. Speed restrictions; excessive wake

No person shall operate a watercraft in excess of the posted limit or at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any person or other watercraft, swamping other watercraft or otherwise endangering the lives or property of other persons.

5-346. Water skiing

A. No watercraft which has in tow a person or persons on water skis, a surfboard or similar contrivance shall be operated in or upon any waterway unless such watercraft shall be occupied by at least two persons, an operator and an observer.

B. The operator shall observe other watercraft traffic, swimmers and hazards and shall not tow a person or persons on water skis, a surfboard or similar contrivance so close to other watercraft, swimmers or structures as to constitute a hazard to life or limb of any person.

C. The observer shall continuously observe the person or persons being towed and shall display a flag immediately after the towed person or persons falls into the water and during the time preparatory to skiing while the person or persons are still in the water. Such flag shall be a bright or brilliant orange or red color, measuring no less than twelve inches on each side, mounted on a handle and displayed as to be visible from every direction.

D. No watercraft operator shall have in tow a person or persons on water skis, a surfboard or similar contrivance during the hours between sunset and sunrise.

5-347. Interference with navigation or launching areas

A. No person shall unreasonably or unnecessarily interfere with other watercraft, with the free and proper use of the waterways of the state or with areas used for launching watercraft onto such waterways. Anchoring or swimming in heavily traveled channels or launching areas shall constitute such interference.

B. No person shall camp or park any vehicle on any boat launching area or otherwise restrict or prevent free access to any area.

5-349. Watercraft casualties; violation; classification

A. The operator of a watercraft involved in a collision, accident or other casualty, to the extent the operator can do so without serious danger to the operator's own watercraft or persons aboard, shall:

1. Immediately stop the watercraft at the scene of the collision, accident or other casualty or as close to the scene of the collision, accident or other casualty as possible but shall immediately return to the scene.
2. Render all practical and necessary assistance to persons affected to save them from danger caused by the collision, accident or other casualty.
3. Remain at the scene of the collision, accident or other casualty until the operator has complied with subsection B of this section.

B. The operator of a watercraft involved in a collision, accident or other casualty shall give the operator's name and address and the identification of the operator's watercraft to any person injured and to the owners of any property damaged.

C. Whenever death or injury results from any watercraft collision, accident or other casualty, a written report shall be submitted within forty-eight hours. For every other collision, accident or other casualty involving property damage exceeding five hundred dollars, a report shall be submitted within five days after the incident by the operator or owner of the watercraft involved. Written reports shall be submitted directly to the department for use in statistical studies for casualty prevention. Reports shall not be used as evidence in any trial, civil or criminal, arising from any collision, accident or other casualty. On request, a report shall be forwarded to the United States coast guard or other authorized federal agency to be used in statistical studies for casualty prevention.

D. To maintain uniformity, watercraft casualty reports shall be on a form approved by the commission.

E. Every peace officer who, in the regular course of duty, investigates any watercraft collision, accident or other casualty involving death or personal injury or involving property damage exceeding five hundred dollars shall prepare and transmit a report to the department pursuant to subsection C of this section.

F. If the operator of a watercraft is involved in a collision or accident that results in death or serious physical injury, as defined in section 13-105, and the operator fails to stop or comply with the requirements of subsection A of this section, the operator is guilty of a class 5 felony. If the operator of a watercraft is involved in a collision or accident that results in injury other than death or serious physical injury and the operator fails to stop and comply with the requirements of subsection A of this section, the operator is guilty of a class 6 felony. If the operator of a watercraft is involved in a collision or accident that results only in damage to property of another or another watercraft, and the operator fails to stop and comply with the requirements of subsection B of this section, the operator is guilty of a class 3 misdemeanor.

5-350. Personal watercraft; requirements for operation; definition

A. A person shall not operate a personal watercraft unless each person aboard is wearing a wearable personal flotation device that is approved by the United States coast guard.

B. A person who operates a personal watercraft that is equipped by the manufacturer with a lanyard type engine cutoff switch shall attach the lanyard to his body, clothing or personal flotation device as appropriate for the specific watercraft.

C. A person shall not operate or knowingly allow another person to operate a personal watercraft under his ownership or control in a reckless or negligent manner endangering the life or property of another person. Prima facie evidence of reckless operation exists if the person commits two or more of the following acts simultaneously:

1. Operates the personal watercraft within a zone of proximity to another watercraft closer than sixty feet unless both are leaving a flat wake or are traveling at a speed of five nautical miles per hour or less.
2. Operates the personal watercraft within the vicinity of a motorboat in a manner that obstructs the visibility of either operator.
3. Heads into the wake of a motorboat that is within a zone of proximity closer than sixty feet and causes one-half or more of the length of the personal watercraft to leave the water.
4. Within a zone of proximity to another watercraft closer than sixty feet, maneuvers quickly, turns sharply or swerves, unless the maneuver is necessary to avoid a collision.

D. If equipped by the manufacturer, a person shall not operate a personal watercraft without a functioning spring-loaded throttle mechanism that immediately returns the engine to an idle speed on release of the operator's hand from the control or without any other engine cutoff feature that is installed by the manufacturer.

E. A personal watercraft shall not be loaded and operated with passengers or cargo beyond its safe carrying capacity or the manufacturer's recommended limits.

F. A person who owns, leases or hires a personal watercraft or who has charge or control over a personal watercraft shall not authorize or knowingly permit the personal watercraft to be operated in violation of this section.

G. This section does not apply to a performer who engages in a professional exhibition or to a person who participates in an officially sanctioned regatta, race, marine parade, tournament or exhibition.

H. For purposes of this section, "personal watercraft" means a watercraft that is less than sixteen feet long, propelled by machinery powering a water jet pump and designed to be operated by a person who sits, stands or kneels on rather than sitting or standing inside the watercraft.

5-361. Uniform navigational marking of waters; intergovernmental agreements

A. No city, county or person shall mark the waters of this state in any manner in conflict with the uniform navigational marking standards of waters as prescribed by the commission or the United States coast guard.

B. On waters where the uniform state waterway marking system has been established and maintained by a governmental agency, the commission may, upon request of such agency, enter into agreements to assist with the maintenance of the system.

5-371. Boat liveries; requirements

A. The owner of a boat livery shall keep or cause to be kept a record of the name and address of the person or persons hiring any watercraft which is designed or permitted by him to be operated as a watercraft, the identification number thereof, the departure date and time and the expected and actual time of return. Such record shall be preserved for at least three months.

B. Neither the owner of a boat livery nor his agent or employee shall permit any watercraft to be operated from his premises unless it shall have been provided, either by the owner or renter, with the equipment required by this chapter.

C. The certificate of number for a watercraft less than twenty-six feet in length that is leased or rented to a person for noncommercial use of less than twenty-four hours may be retained on shore by the owner or his representative at the place from which the watercraft departs or returns to the possession of the owner or his representative. A watercraft which does not have the certificate of number on board shall be identified while in use as may be prescribed by the regulations of the commission.

5-391. Enforcement; violation; classification

A. Any person who violates any provision of this chapter, except section 5-341, subsection A, B, C or D, section 5-349, section 5-350, subsection C, section 5-393, 5-395, 5-396 or 5-397 and subsection C, D, G or H of this section or any rule issued thereunder, is guilty of a petty offense. Any person who violates section 5-350, subsection C is guilty of a class 2 misdemeanor.

B. All peace officers of the state, counties and cities shall enforce the provisions of this chapter and all laws and rules relating to the operation of watercraft.

C. In the enforcement of this chapter, the operator of the watercraft on being hailed by any peace officer shall stop immediately and lay to, or maneuver in such a way as to permit the peace officer to come aboard or alongside. The operator may be ordered ashore to correct any unlawful condition, issued a written warning or written repair order or issued a citation for any violation of this chapter.

D. An operator of a watercraft who wilfully flees or attempts to elude a pursuing law enforcement officer issuing an order pursuant to subsection C of this section is guilty of a class 5 felony. The law

enforcement watercraft shall be appropriately marked to show that it is an official law enforcement watercraft.

E. In the enforcement of this chapter, sections 13-2506 and 13-3903 apply.

F. Each failure to obey an order or to comply with a warning order issued under subsection C of this section shall constitute a separate offense punishable as a separate violation of this chapter.

G. A person is guilty of a class 6 felony who knowingly removes, defaces, obliterates, changes, alters or causes to be removed, defaced, obliterated, changed or altered a factory, engine, serial, outdrive, lower unit, power trim or hull identification number or mark on a watercraft.

H. A person is guilty of a class 2 misdemeanor who:

1. Knowingly displays or has in the person's possession a fictitious, stolen, revoked or altered certificate of number, department issued number or annual decal.
2. Lends to or knowingly permits the use of the person's certificate of number, department issued number or annual decal on a watercraft for which those items have not been issued.

I. On receipt of notice of conviction of a person under subsection G or H of this section, the department may revoke the numbers and decals issued to the watercraft that was involved in the violation and any other watercraft owned by the person convicted.

5-392. Seizure and forfeiture of watercraft

A. Peace officers, in the manner provided in title 13, chapter 39:

1. May seize any watercraft and its trailer if the watercraft displays a fictitious, falsified or altered number or annual decal, or an annual decal from which the accountability or expiration numbers have been intentionally removed or partially removed. This paragraph does not apply to a boat owner or an authorized agent who removes decals or boat numbers for routine maintenance or repair.
2. May seize for forfeiture any watercraft which has had a manufacturer's hull identification number, mark or label or any engine, outdrive, lower unit or power trim number intentionally removed, partially removed, falsified or altered.

B. Allocation of watercraft seized for forfeiture pursuant to subsection A, paragraph 2 of this section shall follow the provisions of section 13-4315, except that if the forfeited property is sold by public or otherwise commercially reasonable sale the expenses of keeping and selling the property and the amount of all valid interests established by claimants shall first be paid out of the proceeds of the sale and the balance shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

5-393. Inspection for stolen watercraft; violation; classification

A. For purposes of enforcing this chapter or locating stolen watercraft or parts of watercraft, peace officers may inspect watercraft to examine the hull identification number, manufacturer's label, outdrive, lower unit or power trim number, or the annual decal or state issued number in a public marina, a storage, repair, sales, leasing or rental lot or facility or a salvage yard or other similar location or establishment and may inspect the registration, title and certificate of number of the watercraft to establish the rightful ownership or possession of the watercraft.

B. Inspections shall be conducted at a time and in a manner so as to minimize any unreasonable interference with or delay of the use of the watercraft or the operation of the business where the watercraft is located.

C. A person who refuses to permit an inspection under this section is guilty of a class 1 misdemeanor.

5-399. Towing companies

A. If a towing company tows a watercraft, the towing company shall provide written notification by mail to the owner and lienholder, if known, of the watercraft's location. The towing company shall obtain the owner and lienholder information pursuant to section 5-324.

B. If the watercraft's owner or lienholder, if known, does not remove the watercraft from the towing company's premises within fifteen days of mailing of notice under subsection A of this section, the towing company shall:

1. Report the watercraft on forms prescribed by the director of the Arizona game and fish department.
2. Submit the report to the director of the Arizona game and fish department.

5-399.01. Abandoned watercraft; notice of intent to transfer ownership

A. On receipt of a report as required by this article, the director shall determine the names and addresses of the owner and lienholder, if known, or any other person identified on the department's record who may have an interest in the watercraft by either:

1. Searching the department records.
2. Asking the watercraft registration agency of another state if the watercraft is registered in that state.

B. On receipt of information from reports pursuant to section 5-399 and after determining the names and addresses of the owner and lienholder, if known, or any other person identified on the department's record who may have an interest in the watercraft, the director shall notify all interested persons by mail within five business days for a watercraft with a record in this state or within thirty days for all other watercraft. The notice shall include:

1. A complete description of the watercraft.
2. A notice of intent to transfer ownership of the watercraft to the towing company in possession of the watercraft if within thirty days from the date indicated in the notification by the department the owner or lienholder, if known, or a person who has an interest in the watercraft does not notify the department of the owner's, lienholder's, if known, or person's interest in the watercraft and claim the watercraft.
3. The watercraft's hull identification number.
4. The state issued registration number assigned to the watercraft.
5. The place from which and date the watercraft was towed.
6. The storage location of the watercraft.

C. If the records of the department or out of state jurisdiction do not disclose the names and addresses of the owner and lienholder, if any, or any other person identified on the department's record who may have an interest in the watercraft, or if the notice is returned marked unclaimed or address unknown, the department shall publish a notice of the intent of the director to transfer ownership of the towed watercraft pursuant to this article once in a newspaper or other publication of general circulation in the county in which the watercraft was towed. The published notice shall include a statement of the intent of the director to transfer ownership of the watercraft after ten days of the published notice and the department shall make available to the public a complete description of abandoned watercraft subject to transfer of ownership.

D. The towing company that filed the report shall notify the director within twenty-four hours and in the manner prescribed by the director if the watercraft is released or returned to or redeemed or repossessed by the lawful owner or lienholder, if any, or any other known person who is identified on the department's record who may have an interest in the watercraft.

5-399.02. Unclaimed watercraft; transfer of ownership; violation; classification

A. If a watercraft remains unclaimed at the expiration of the deadlines prescribed in section 5-399.01, subsections B and C, the director shall make an inquiry to determine if the watercraft is stolen. On receiving notice that the watercraft has not been reported stolen, the director may transfer ownership of the watercraft to the towing company free and clear of all liens or encumbrances on compliance with this article.

B. An application for transfer of ownership shall be completed and signed by the towing company or authorized agent of the towing company and shall contain a certified statement that includes the following:

1. As of the date of application, no person has presented proof of ownership or proof of interest in the watercraft and entered into an agreement for the release or return of the watercraft.

2. The towing company is currently in possession of the watercraft.

C. This state and its agencies, employees and agents are not liable for relying in good faith on the contents of the reports or affidavits as prescribed by this article.

D. If a towing company complies with this article, the towing company in possession of a watercraft is not liable for obtaining a transfer of ownership of the watercraft.

E. A towing company that obtains watercraft pursuant to this article shall maintain records of all of the following:

1. The request made pursuant to section 5-324.
2. The notification provided pursuant to section 5-399.
3. The application for transfer of ownership pursuant to this section.
4. Any documents pertaining to ownership transfer of abandoned watercraft that the director deems necessary.

F. A towing company shall maintain the records prescribed by subsection E of this section for three years from the date the ownership of the watercraft is transferred. The records may be audited by any law enforcement officer or employee of the department during normal business hours.

G. A tower who fails to maintain records as prescribed in this section is guilty of a class 2 misdemeanor.

5-399.03. Abandoned watercraft processing rules; fees

The department may:

1. Adopt rules to carry out the requirements of this article.
2. Establish fees to implement this article.

F-4

ARIZONA DEPARTMENT OF REVENUE (F-16-0601)
Title 15, Chapter 5, Article 1, Retail Classification; Article 4, Amusement Classification

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-4**

TO: Members of the Governor's Regulatory Review Council

FROM: Shama Thathi, Staff Attorney

DATE : May 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF REVENUE (F-16-0601)**
Title 15, Chapter 5, Article 1, Retail Classification; Article 4, Amusement Classification

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Revenue (Department) is to "efficiently and fairly administer and collect the taxes levied by this state and to determine the valuation of centrally assessed property in this state." Laws 2006, Ch. 391, § 7.

This five-year-review report covers 46 rules in A.A.C. Title 15, Chapter 5 (Chapter 5), which relate to transaction privilege and use tax section. The Department has chosen not to review one additional rule, R15-5-175, and has allowed it to expire.

Article Contents

Article 1 contains 43 rules related to retail classification, which address sales for resale or lease; casual sales; sale of business enterprises; service businesses; services in connection with retail sales; finance charges in connection with retail sales; lease-purchase agreements; consignment sales; sales by auctioneers; sales by trustees, receivers, and assignees; exemption sales of machinery or equipment; sales of fuel used in manufacturing; articles incorporated into a manufactured product; sales of tools and supplies to businesses; manufacturing labor; sales of fuel; electric power transmission and distribution; discounts, refunds, and coupon redemption; lay-away sales; retail sales with trade-ins; delivery charges in connection with retail sales; sales of containers, bottles, and labels; sales of restaurant accessories; returnable containers; warranty or service provisions and tangible personal property used in conjunction with warranty or service provisions; warranty or service contracts and tangible personal property used in conjunction with warranty or service contracts; sale of photography; artists; tangible personal property used in soil

remediation activities; four-inch pipes or valves; computer hardware and software; sales of prescription drugs and prosthetic appliances; membership fees; postage stamps; interstate and foreign transactions; sales to a common carrier; sales by florists; sales of property subsequently taken out-of-state; sales to non-U.S. citizens; sales by businesses in federal areas; governmental organizations; non-profit organizations; and exempt sales to health organizations.

Article 4 contains 3 rules related to amusement classification, which address amusement devices; other income; and health or fitness establishments and private recreational establishments.

Year that Each Rule was Last Amended or Newly Made

- August 9. 1993: Sections 102, 112, 120, 121, 122, 123, 126, 128, 129, 131, 132, 133, 134, 136, 151, 153, 157, 170, 171, 172, 173, 174, 181
- April 21, 1995: Section 183
- September 22, 1997: Section 404
- December 11, 1998: Section 152
- October 4, 2000: Section 158
- December 4, 2004: Section 127
- September 10, 2005: Sections 154, 156
- February 6, 2006: Section 150
- December 4, 2006: Sections 101, 103, 104, 105, 106, 110, 111, 113
- April 7, 2007: Sections 135, 137, 138, 180, 182, 403, 406

Proposed Action

The Department plans to amend 23 rules in Title 15, Chapter 5, Article 1. Specific actions are outlined throughout the memorandum.

Summary of Reasons for the Proposed Action

The majority of the rules need to be amended to meet the requirements of the Secretary of State, and to improve effectiveness, clarity, conciseness and understandability.

Exemption or Request and Approval for Exception from the Moratorium

The Department anticipates seeking an exception from the moratorium from the Governor's Office by September 30, 2016.

Substantive or Procedural Concerns

None.

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

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

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

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

Yes. The Department indicates that the rules are effective in achieving their objectives, with the following exceptions:

- Section 120 should include a definition of "processing."
- Section 129 should clarify that the coupons issued by manufacturers do not result in refunds when used by customers.
- Section 133 should address shipping and handling charges, and how those charges relate to freight costs.
- Section 134 fails to address items such as crates and boxes.
- Section 151 contains an outdated reference to R15-5-1218, which was repealed in 1993.
- Section 152 should be revised to include the correct statutory reference from A.R.S. § 42-310.06(B)(16) to A.R.S. § 42-5075(B)(6).
- Section 153 should incorporate statutory changes addressing equipment necessary to operate the pipes and valves, and the issue of sewage transported by these pipes.
- Section 171 is partially ineffective. It should include additional instances of sales to a common carrier.

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

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

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

Yes. The Department cites general statutory authority for the rules reviewed. Under A.R.S. § 42-1005(A)(1), the director of the Department shall "[m]ake such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title [Title 42, Taxation] and title 43 [Taxation of Income]."

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

- Under A.R.S. § 42-5061(A), retail classification is "comprised of the business of selling tangible personal property at retail." The statute provides a list of businesses that fall under this category.

- Under A.R.S. § 42-5073(A), amusement classification is "comprised of the business of operating or conducting…any…business charging admission or user fees for exhibition, amusement or entertainment…." The statute provides a list of activities that do not fall under the category of amusement classification.

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

Yes. The Department indicates that the rules are consistent with other rules and statutes, with the following exceptions:

- R15-5-129(D) is inconsistent with A.R.S. § 42-5001(7).
- R15-5-183 is inconsistent with A.R.S. § 42-5001(9)(b) and § 42-5001(12)(d).

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

Yes. The Department indicates that the rules are enforced as written.

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

Yes. The Department indicates that 13 of the rules need to be revised to comply with the Secretary of State's rule writing guidelines. Additionally, the Department has identified the following changes that would make the rules more clear, concise, and understandable:

- Section 104 contains duplicative language in subsections (A) and (B).
- Section 128 needs to be amended to clarify that the rule applies to utilities classification.
- Section 129 is confusing because it incorrectly implies that the coupons issued by manufacturers result in refunds when used by customers.
- Section 132 is confusing. The rule should refer to the value of the trade-in, rather than the dollar amount of the trade-in. In addition, the rule should address circumstances in which a lien exists or property is leased.

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

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

Not applicable. The rules are based on state law.

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

Not applicable.

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

a. <u>The rules require issuance of a regulatory permit, license or agency authorization?</u>

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

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

Not applicable.

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

Yes. The Department indicates that it did not complete the course of action identified in the previous five-year-review report approved by the Council on June 7, 2011. In that report, the Department proposed changes to 13 rules. The Department believes that it did not have the proper justification to seek an exception to the moratorium under previous Executive Orders.

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

Yes. The Department intends to submit a request to the Governor's Office for an exemption from the moratorium by September 30, 2016. Further, the Department anticipates submitting a rulemaking to the Council 18 months after receiving an exception from the moratorium.

<u>Conclusion</u>

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

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-4**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : May 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF REVENUE (F-16-0601)**
Title 15, Chapter 5, Article 1, Retail Classification; Article 4, Amusement Classification

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

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

The economic, small business, and consumer impact statement (EIS) from the most recent Department rulemaking completed in 1993 was not available for review for Articles 1 and 4. The Department notes that the economic impact is generally derived from the statutes and not the rules created to enforce these statutes.

The Article 1 rules address the different types of retail businesses in Arizona that are subject to transaction privilege taxes and use taxes. The Article 4 rules address this same subject for amusement devices, like billiard tables or electronic games.

Key stakeholders that will be impacted are the Department, retail sellers, businesses operating amusement devices, and state revenues. Direct economic impact on consumers is derived from the taxation statutes, not the rules used to enforce these statutes.

The Department notes that these rules are intended to clarify taxation areas that have been rife with vague language that created numerous administrative hearings and contested issues. Clearer rules reduce the costs for businesses in the form of less tax research. These clarifications also reduce the auditing costs of the Department. Finally, clearer taxation rules have a positive impact on the general fund by increasing compliance.

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

The Department determines that the rules require revisions in order to correct references, increase clarity, and comply with the Secretary of State's guidelines. The Department indicates that it does not have proper justification to seek an exception to the rules moratorium. Once these amendments are completed, the rules will impose the least burden and costs to persons regulated by them while achieving the underlying regulatory objective.

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

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

4. Conclusion

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

STATE OF ARIZONA
Department of Revenue

Douglas A. Ducey
Governor

David Briant
Director

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March 24, 2016

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

Re: Five Year Review Report of Title 15, Chapter 5, Articles 1 and 4

Dear Ms. Ong:

The enclosed report is a summarization of the five-year rule review undertaken by the Department of Revenue covering the administrative rules in Title 15, Chapter 5, Articles 1 and 4. The review was conducted pursuant to A.R.S. § 41-1056.

This report is the result of the review and analysis of existing rules and statutory provisions pertaining to retail and amusement classifications. The Department certifies that it is in compliance with A.R.S. § 41-1091.

The Department has chosen not to review R15-5-175 "Sales to Nonresidents Temporarily Within this State" and to allow this rule to expire.

The Department anticipates submission of the following rules proposed for amendment to the Governor's Regulatory Review Council within twelve months of the expiration of the Governor's rulemaking moratorium.

R15-5-104	Service Businesses
R15-5-120	Exempt Sales of Machinery or Equipment
R15-5-121	Sales of Fuel Used in Manufacturing
R15-5-122	Articles Incorporated into a Manufactured Product
R15-5-123	Sale of Tools and Supplies to Businesses
R15-5-126	Manufacturing Labor
R15-5-128	Electric Power Transmission and Distribution
R15-5-129	Discounts, Refunds, and Coupon Redemption
R15-5-131	Lay-away Sales
R15-5-132	Retail Sales with Trade-ins
R15-5-133	Delivery Charges in Connection with Retail Sales

R15-5-134	Sales of Containers, Bottles, and Labels
R15-5-136	Returnable Containers
R15-5-151	Artists
R15-5-152	Tangible Personal Property Used in Soil Remediation Activities
R15-5-153	Four-inch Pipes or Valves
R15-5-157	Membership Fees
R15-5-170	Interstate and Foreign Transactions
R15-5-171	Sales to a Common Carrier
R15-5-172	Sales by Florists
R15-5-173	Sales of Property Subsequently Taken Out-of-state
R15-5-181	Governmental Organizations
R15-5-183	Exempt Sales to Health Organizations

If you have any questions, please contact Kerry Montgomery, Attorney III, Tax Research & Analysis Section at (602) 716-6850 or via email at KMontgomery@azdor.gov. Thank you for your consideration.

Sincerely,

Christie Comanita
Policy and Research Administrator
Tax Policy & Research Division

Enclosures

ARIZONA DEPARTMENT OF REVENUE

FIVE-YEAR-REVIEW REPORT:
TRANSACTION PRIVILEGE AND USE TAX SECTION
A.A.C. Title 15, Chapter 5, Articles 1 and 4

For the

GOVERNOR'S REGULATORY REVIEW COUNCIL

March 2016

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This report summarizes the result of a review of the rules promulgated by the Department of Revenue to assist the public and the Department in interpreting and applying the tax statutes.

Information that is Identical within Groups of Rules

The following information is identical for each group of rules in Title 15, Chapter 5, Articles 1 and 4. Because this information is the same for each rule, pursuant to A.A.C. R1-6-301(B), it is discussed only once and is not included in the analysis of individual rules.

A. Authorization

General Authorization for the Rules:

All of the rules are generally authorized by Arizona Revised Statutes ("A.R.S.") § 42-1005, which provides that the Director of the Department of Revenue shall make administrative rules as necessary and proper to effectively administer the Department and enforce A.R.S. Title 42 and Title 43.

Specific Authorization for the Rules:

1. A.R.S. § 42-5061 is the specific statute upon which the following rules are based:

R15-5-101 Sales for Resale or Lease

R15-5-103 Sale of Business Enterprises

R15-5-104 Service Businesses

R15-5-105 Services in Connection with Retail Sales

R15-5-106 Finance Charges in Connection with Retail Sales

R15-5-110 Lease-purchase Agreements

R15-5-111 Consignment Sales

R15-5-112 Sales by Auctioneers

R15-5-113 Sales by Trustees, Receivers, and Assignees

R15-5-120 Exempt Sales of Machinery or Equipment

R15-5-121 Sales of Fuel Used in Manufacturing

R15-5-122 Articles Incorporated into a Manufactured Product

R15-5-123 Sale of Tools and Supplies to Businesses

R15-5-126 Manufacturing Labor

R15-5-127 Sales of Fuel

R15-5-128 Electric Power Transmission and Distribution

R15-5-129 Discounts, Refunds, and Coupon Redemption

R15-5-131 Lay-away Sales

R15-5-133 Delivery Charges in Connection with Retail Sales

R15-5-134 Sales of Containers, Bottles, and Labels

R15-5-135 Sales of Restaurant Accessories

R15-5-136 Returnable Containers

R15-5-137 Warranty or Service Provisions and Tangible Personal Property Used in Conjunction with Warranty or Service Provisions

R15-5-138 Warranty or Service Contracts and Tangible Personal Property Used in Conjunction with Warranty or Service Contracts

R15-5-150 Sale of Photography

R15-5-151 Artists

R15-5-152 Tangible Personal Property Used in Soil Remediation Activities

R15-5-153 Four-inch Pipes or Valves

R15-5-154 Computer Hardware and Software

R15-5-156 Sales of Prescription Drugs and Prosthetic Appliances

R15-5-157 Membership Fees

R15-5-158 Postage Stamps

R15-5-170 Interstate and Foreign Transactions

R15-5-171 Sales to a Common Carrier

R15-5-172 Sales by Florists

R15-5-173 Sales of Property Subsequently Taken Out-of-state

R15-5-174 Sales to Non-U.S. Citizens

R15-5-180 Sales by Businesses in Federal Areas

R15-5-181 Governmental Organizations

R15-5-182 Nonprofit Organizations

R15-5-183 Exempt Sales to Health Organizations

2. A.R.S. §§ 42-5001 and 42-5061 are the specific statutes upon which the following rules are based:

R15-5-102 Casual Sales

R15-5-132 Retail Sales with Trade-ins

3. A.R.S. § 42-5073 is the specific statute upon which the following rules are based:

R15-5-403 Amusement Devices

R15-5-404 Other Income

R15-5-406 Health or Fitness Establishments and Private Recreational Establishments

C. Effectiveness of the Rules in Achieving Their Objectives:

With the exceptions noted in the consistency and clarity portions of the report, the stated objectives of the following rules are effectively met.

R15-5-101 Sales for Resale or Lease

R15-5-102 Casual Sales

R15-5-103 Sale of Business Enterprises

R15-5-104 Service Businesses

R15-5-105 Services in Connection with Retail Sales

R15-5-106 Finance Charges in Connection with Retail Sales

R15-5-110 Lease-purchase Agreements

R15-5-111 Consignment Sales

R15-5-112 Sales by Auctioneers

R15-5-113 Sales by Trustees, Receivers, and Assignees

R15-5-121 Sales of Fuel Used in Manufacturing

R15-5-122 Articles Incorporated into a Manufactured Product

R15-5-123 Sale of Tools and Supplies to Businesses

R15-5-126 Manufacturing Labor

R15-5-127 Sales of Fuel

R15-5-128 Electric Power Transmission and Distribution

R15-5-131 Lay-away Sales

R15-5-132 Retail Sales with Trade-ins

R15-5-135 Sales of Restaurant Accessories

R15-5-136 Returnable Containers

R15-5-137 Warranty or Service Provisions and Tangible Personal Property Used in Conjunction with Warranty or Service Provisions

R15-5-138 Warranty or Service Contracts and Tangible Personal Property Used in Conjunction with Warranty or Service Contracts

R15-5-154 Computer Hardware and Software

R15-5-156 Sales of Prescription Drugs and Prosthetic Appliances

R15-5-157 Membership Fees

R15-5-158 Postage Stamps

R15-5-170 Interstate and Foreign Transactions

R15-5-172 Sales by Florists

R15-5-173 Sales of Property Subsequently Taken Out-of-state

R15-5-174 Sales to Non-U.S. Citizens

R15-5-180 Sales by Businesses in Federal Areas

R15-5-181 Governmental Organizations

R15-5-182 Nonprofit Organizations

R15-5-183 Exempt Sales to Health Organizations

R15-5-403 Amusement Devices

R15-5-404 Other Income

R15-5-406 Health or Fitness Establishments and Private Recreational Establishments

D. Consistency of the Rules with State and Federal Statutes and Rules:

The following rules are consistent with state and federal statutes and rules.

R15-5-101 Sales for Resale or Lease

R15-5-102	Casual Sales
R15-5-103	Sale of Business Enterprises
R15-5-104	Service Businesses
R15-5-105	Services in Connection with Retail Sales
R15-5-106	Finance Charges in Connection with Retail Sales
R15-5-110	Lease-purchase Agreements
R15-5-111	Consignment Sales
R15-5-112	Sales by Auctioneers
R15-5-113	Sales by Trustees, Receivers, and Assignees
R15-5-120	Exempt Sales of Machinery or Equipment
R15-5-121	Sales of Fuel Used in Manufacturing
R15-5-122	Articles Incorporated into a Manufactured Product
R15-5-123	Sale of Tools and Supplies to Businesses
R15-5-126	Manufacturing Labor
R15-5-127	Sales of Fuel
R15-5-128	Electric Power Transmission and Distribution
R15-5-131	Lay-away Sales
R15-5-132	Retail Sales with Trade-ins
R15-5-133	Delivery Charges in Connection with Retail Sales
R15-5-134	Sales of Containers, Bottles, and Labels
R15-5-135	Sales of Restaurant Accessories
R15-5-136	Returnable Containers

R15-5-137	Warranty or Service Provisions and Tangible Personal Property Used in Conjunction with Warranty or Service Provisions
R15-5-138	Warranty or Service Contracts and Tangible Personal Property Used in Conjunction with Warranty or Service Contracts
R15-5-150	Sale of Photography
R15-5-151	Artists
R15-5-152	Tangible Personal Property Used in Soil Remediation Activities
R15-5-153	Four-inch Pipes or Valves
R15-5-154	Computer Hardware and Software
R15-5-156	Sales of Prescription Drugs and Prosthetic Appliances
R15-5-157	Membership Fees
R15-5-158	Postage Stamps
R15-5-170	Interstate and Foreign Transactions
R15-5-171	Sales to a Common Carrier
R15-5-172	Sales by Florists
R15-5-173	Sales of Property Subsequently Taken Out-of-state
R15-5-174	Sales to Non-U.S. Citizens
R15-5-180	Sales by Businesses in Federal Areas
R15-5-181	Governmental Organizations
R15-5-182	Nonprofit Organizations
R15-5-403	Amusement Devices
R15-5-404	Other Income
R15-5-406	Health or Fitness Establishments and Private Recreational Establishments

E. Agency Enforcement Policy:

All of the rules reflect established policy and procedures and are consistently and fairly enforced.

F. Clarity, Conciseness and Understandability:

The following rules are clear, concise and understandable:

R15-5-101	Sales for Resale or Lease
R15-5-102	Casual Sales
R15-5-103	Sale of Business Enterprises
R15-5-105	Services in Connection with Retail Sales
R15-5-106	Finance Charges in Connection with Retail Sales
R15-5-110	Lease-purchase Agreements
R15-5-111	Consignment Sales
R15-5-112	Sales by Auctioneers
R15-5-113	Sales by Trustees, Receivers, and Assignees
R15-5-127	Sales of Fuel
R15-5-135	Sales of Restaurant Accessories
R15-5-137	Warranty or Service Provisions and Tangible Personal Property Used in Conjunction with Warranty or Service Provisions
R15-5-138	Warranty or Service Contracts and Tangible Personal Property Used in Conjunction with Warranty or Service Contracts
R15-5-150	Sale of Photography
R15-5-154	Computer Hardware and Software

R15-5-156 Sales of Prescription Drugs and Prosthetic Appliances

R15-5-158 Postage Stamps

R15-5-174 Sales to Non-U.S. Citizens

R15-5-180 Sales by Businesses in Federal Areas

R15-5-182 Nonprofit Organizations

R15-5-403 Amusement Devices

R15-5-404 Other Income

R15-5-406 Health or Fitness Establishments and Private Recreational Establishments

The following rules are generally clear, concise, and understandable. However, these rules contain language that does not conform to existing rulewriting standards:

R15-5-121 Sales of Fuel Used in Manufacturing

R15-5-122 Articles Incorporated into a Manufactured Product

R15-5-123 Sale of Tools and Supplies to Businesses

R15-5-126 Manufacturing Labor

R15-5-131 Lay-away Sales

R15-5-136 Returnable Containers

R15-5-157 Membership Fees

R15-5-170 Interstate and Foreign Transactions

R15-5-171 Sales to a Common Carrier

R15-5-172 Sales by Florists

R15-5-173 Sales of Property Subsequently Taken Out-of-state

R15-5-181 Governmental Organizations

R15-5-183 Exempt Sales to Health Organizations

G. Written Criticisms Received within the Last Five Years:

The Arizona Department of Revenue has not received any written criticism regarding any of the rules in Title 15, Chapter5, Articles 1 and 4 during the past five years.

H. Economic, Small Business, and Consumer Impact:

Generally, the economic impact of the taxation regulatory scheme is derived from the statutes themselves, and not the rules adopted to interpret the application of the tax. It is only when a rule imposes the requirement to prepare a form or submit documentation, not specifically required by statute, that the rule has an economic impact. The transaction privilege tax is levied on income derived by the seller, who is legally allowed to pass the economic expense of the tax on to the purchaser. However, the seller is ultimately liable to Arizona for the tax. In this report, "taxpayer" means the seller for transaction privilege tax purposes.

1. Rules in A.A.C. Title 15, Chapter 1, Article 1

The majority of the rules in Article 1 were amended, renumbered, or added effective August 9, 1993. Ten other rules were repealed and two were transferred at that time. The rules were placed in seven broad categories.

An economic impact statement was prepared for the Article as a whole and for each of the seven categories of rules. Consequences affecting the Department, other state

agencies, private entities, and consumers were discussed as well as the impact on small business.

Overall, it was believed that the hearing office of the Department might experience a decrease in contested cases due to the clarification of the retail rules, while at the same time the Department might experience an initial increase in taxpayer questions. Over time the number of questions was anticipated to decrease.

General Concept Rules

Added: R15-5-102

This rule was thought to promote greater consistency and uniformity in Department auditing procedures and result in cost savings, due to audit efficiency.

There was expected to be a possible positive impact on the general fund by adding the general concept rules based on the possible increase in voluntary tax compliance by taxpayers and an increase in the resolution of problem areas under an audit situation.

The clarification of the concepts in the rules was expected to bring to the attention of a retailer or a service organization that tax has either been charged or not charged in error in the past. Small business was expected to change its procedures as a result, which might have resulted in additional cost to the small business.

The Department believes that the economic impacts that were projected at the time that these rules were amended, renumbered, or added are accurate.

Sales by Others

Amended/Renumbered: R15-5-112

It was expected that the Department should experience a decrease in questions from the public and that the hearing office in the Department might experience a decrease in contested cases due to the rule changes.

With the clarification provided by the rule it was possible that consumers could experience an increase in the type or number of transactions that they find are subject to tax. Vendors operating in the area covered by this rule may not have previously been remitting tax due to a lack of understanding. If there was a lack of understanding due to the vague presentation of the concept, there was the possibility that small business would be faced with re-evaluating their accounting and bookkeeping system to reflect proper treatment of the transactions, which might result in additional cost to the small business.

The Department believes that the economic impacts that were projected at the time that these rules were amended, renumbered, or added are accurate.

Items Used in the Process or Incorporated into the Creation of a Product

Amended/Renumbered	Added
R15-5-120	R15-5-129
R15-5-121	
R15-5-122	
R15-5-123	
R15-5-126	
R15-5-128	

Note: R15-5-129 was added by the 1993 package, but after the EIS was submitted. Therefore no original EIS is available.

The changes in the rules were expected to make it easier for the Department to enforce the rules by providing the audit section additional guidance. It was also anticipated that the changes in the rules could result in a positive impact to the general fund due to increased compliance based on the addition of clarifying language and the introduction of new rules.

The rules were intended to clarify an area of taxation that had resulted in many contested issues, administrative decisions and hearings. The clarification of the rules was also expected to possibly lead taxpayers to pay applicable taxes that had not been paid before. Additionally, the rules were intended to enable private entities to save time and costs in researching issues.

No direct impact on the consumer was expected. Indirectly, consumers might begin paying their share of the additional tax burden caused by the increased enforcement of tax statutes. However, these indirect impacts are created by the statutes, not the rules that enforce the statutes.

It was thought that small businesses in the manufacturing environment would be impacted by the rules in the same manner as other private entities. It was described as very possible that the businesses might find that they would be experiencing an increase in the amount of transaction privilege tax they would be paying.

It was expected that in the long run the rules could save time and possibly legal costs by clarifying the position of the State regarding the concepts contained in these rules.

The Department believes that the economic impacts that were projected at the time that these rules were amended, renumbered, or added are accurate.

Special Conditions

Amended/Renumbered	Added
R15-5-132	R15-5-131
R15-5-133	
R15-5-134	
R15-5-136	

The clarification provided in the new rules through the addition of new language, and the repeal of vague concepts and examples was expected to result in time savings by Department personnel. The clarification was thought to also result in fewer contested cases and corresponding workload required by the audit section and hearing office attention.

The Office of Attorney General was expected to experience a reduction in contested cases in the area. The change in the treatment of customer rebates so that they could no longer be deducted was expected to cause a positive impact on the general fund.

It was thought that private entities would be impacted significantly by certain changes in the rules. R15-5-131 set forth Department policy regarding lay-away sales. The portion of the rule which addressed the taxation of monies when the purchaser defaulted was expected to be a change for some retailers since there had been no definitive statement to the public previously. R15-5-132 dealing with trade-ins was expected to help retailers selling tangible personal property who accept trade-ins in providing the necessary documentation. Under the prior rule, resolution of issues under audit was difficult and resulted in contested cases due to the vagueness of the rule. R15-

5-134 was expected to lead private entities to experience tax savings as a number of taxpayers may have been incorrectly paying tax on packing materials.

The consumer was expected to be impacted by the retailer passing through the increased cost associated with the administration of the trade-in provision (R15-5-132). If the retailer had to revamp the accounting system to allow for these changes, these costs could also have been passed on to the consumer. The clarification of the taxation on containers might result in a decrease in cost that could have been passed on to the consumer (R15-5-134).

Small businesses were expected to see the same consequences as private entities. Any additional costs were anticipated to be temporary, with no undue hardship in the correct application of the tax law to each business setting.

The Department believes that the economic impacts that were projected at the time that these rules were amended, renumbered, or added are accurate.

Special "Industries"

Amended/Renumbered	Added
R15-5-153	R15-5-157

The clarification provided in these rules was expected to result in a marked decrease in the number of questions received by the Department from taxpayers and practitioners. It was intended to substantiate the authority of the position of the Department in handling contested cases and in enforcing these policies in audit situations.

Based on a reduction in taxpayer inquiries and a possible increase in compliance due to the clarification in these rules, it was thought that the State could experience an increase in cash flow to the general fund.

Consumers were not thought to be heavily impacted by the changes in the rules. The impact on small businesses was expected to be the same as on other private entities.

The Department believes that the economic impacts that were projected at the time that these rules were amended, renumbered, or added are accurate.

Transactions Affecting Interstate Items

Amended/Renumbered	Added
R15-5-170	R15-5-171
	R15-5-172
	R15-5-173
	R15-5-174

These rules were thought to have minimal impact on the Department and all state agencies. The separation of the rule into various specific rules clarified the presentation of the concepts in the prior rule. In order to maintain the interstate commerce exemption, businesses needed to be more careful in how contracts were written. There was no other direct or indirect impact from the changes in these rules as they largely served to clarify the concepts in the previous rule.

There was no substantive impact on small businesses within Arizona. Companies had to pay more attention to certain transactions to maintain the interstate commerce exemption. Florists should have found the clarification of the rules helpful when dealing with transactions with other florists (R15-5-172).

The Department believes that the economic impacts that were projected at the time that these rules were amended, renumbered, or added are accurate.

Special Organizations

Amended/Renumbered

R15-5-181

R15-5-151

R15-5-183

The clarification regarding the taxation of governmental organizations was expected to result in increased compliance and a reduction in contested cases in this area (R15-5-181). No additional impact was expected on small business entities.

The Department believes that the economic impacts that were projected at the time that these rules were amended, renumbered, or added are accurate.

R15-5-151 was amended effective April 15, 1993. The previously existing rule, R15-5-1837, was proposed for renumbering only as part of the preceding rule package.

The Department was expected to be more efficient by having more accurate information for its own use and to be able to spend less time writing responses to questions raised by taxpayers. The Licensing Section of the Department was also expected to experience time and cost savings in the more efficient licensing of taxpayers. The Secretary of State, Office of Strategic Planning and Budgeting, and the Office of Attorney General were all expected to have costs due to noticing, printing, reviewing and analyzing the rule. The Board of Tax Appeals and the Office of Attorney General was expected to experience time and cost savings based on greater clarity, thereby resulting in fewer appeals. The general fund might also have been affected in an indeterminable amount – increased payments due to correct payments of transaction privilege tax on sales of artwork, but decreases due to exemption for sale of ingredient or component materials.

Private entities would incur direct costs in becoming licensed and in completing their periodic tax reports. Private entities were expected to benefit directly and indirectly from the increased clarity of the rule – directly through better understanding and fewer questions, and indirectly as private entities, such as organizers of arts and craft fairs, adjusted procedures. Event organizers were expected to benefit in cost and time savings by not needing to intervene on behalf of an artist protesting the vague and incomplete rule.

Consumers were thought to have a direct cost if the artist chose to pass on the cost of the applicable tax. At the same time there may have been an indirect benefit to the consumer if the artist reduced the price of the artwork as a result of being able to purchase ingredient or component material tax free.

Most artists or artisans who are engaged in artistic business activity are considered to be small businesses. It was thought that the application of the rule might impose a reporting requirement on the small business. The statute did provide payment on a quarterly or annual basis for those businesses with a small estimated annual liability. As it was indicated that some artists were already imposing the tax; the rule would benefit those taxpayers by assuring that all taxpayers pay their fair share.

The Department believes that the economic impacts that were projected at the time that this rule was amended and renumbered are accurate.

R15-5-183 was amended effective April 21, 1995. It was amended in a package that, among other items, also amended other sections of the rules concerning health care organizations.

The Transaction Privilege and Use Tax Audit Section of the Department and other Department personnel were expected to experience time and cost savings in answering inquiries from the public concerning obtaining exempt status since portions of the rules contradicted statutory provisions. The Secretary of State, Office of Strategic Planning and Budgeting, and the Office of Attorney General were all expected to incur costs due to noticing, printing, reviewing and analyzing the rule.

Private entities were expected to benefit both directly and indirectly from the increased clarity of the rules with the deletion or amendment of rules that were inconsistent with statute. The private entities affected by R15-5-183 included retail vendors, who were to receive benefits through a clear understanding of the exemption letter process.

The consumers affected by R15-5-183 were qualifying health care organizations. The amended rule was thought to benefit qualifying health care organizations that have fiscal year accounting periods. A benefit came from the change in the specific required submission date that coincided with calendar year reporting. The flexible exemption period provided was thought to aid organizations in obtaining requisite financial documents that may result in fewer delayed or denied exemption requests. When an organization couldn't obtain an exemption, or the exemption was delayed, the organization was possibly forced into paying tax on its purchases. Once the exemption was granted, additional expenses were incurred in seeking a refund of the taxes paid. Since the tax was levied on the vendor, the vendor had to obtain a refund from the Department and remit the refund to the organization. All concerned parties would have benefited in terms of time and cost saving by a flexible exemption period.

The Department believes that the economic impacts that were projected at the time that this rule was amended, renumbered, or added are accurate.

Soil Remediation Activities

Added: R15-5-152

R15-5-152 was adopted effective December 11, 1998. It was added in a package that, among other items, also amended other sections of the rules concerning tangible personal property used in soil remediation.

It was expected that the rules would result in time and cost savings to the Department since it would not be necessary for personnel to explain to taxpayers the requirements and procedures explained in the rule.

The Secretary of State and Governor's Regulatory Review Council staff was expected to incur costs in noticing, printing, reviewing and analyzing the rules. It was expected that public and private entities could incur a minimal cost in obtaining copies, while benefiting from the rule by having definitive requirements and procedures to follow. No direct or indirect costs or benefits to consumers were anticipated. Small businesses were to have no additional reporting or compliance requirements. Small businesses were to benefit from the increased clarity of the rule.

The Department believes that the economic impacts that were projected at the time that this rule was added are accurate.

Postage Stamps

Added: R15-5-158

R15-5-158 was added effective October 4, 2000. It was expected that the benefits of the rule would be greater than the costs. The addition of the rule would benefit the

public by making it clear when the sale or purchase of postage stamps is taxable. The rule only provides guidance in the application of the statute; the statute imposes the tax and establishes any deductions. Taxpayers were not expected to incur any costs.

The Department believes that the economic impacts that were projected at the time of the adoption of this rule are accurate.

Sales of Fuel

Amended: R15-5-127

R15-5-127 was amended effective December 4, 2004. The Department did not anticipate any significant economic impact as a result of amending the rule. Because the amendment clarifies and more accurately explains the scope and nature of the transaction privilege tax and use tax exemptions for the aforementioned fuel types, some consumers and fuel vendors might have experienced a minimal impact resulting from increased compliance measures. The Department expected that benefits derived from the rules to the public and the Department would be greater than the costs.

The Department believes that the economic impacts that were projected at the time of the amendments of this rule are accurate.

Computer Hardware and Software

Amended: R15-5-154

R15-5-154 was amended effective September 10, 2005. The Department did not anticipate a significant economic impact to Arizona businesses or consumers arising from the rulemaking. The rule reflected already-existing Department policy and interpretation. The Department expected that the benefits of the amended rule to the public and the

agency from achieving a better understanding of taxation related to computer hardware and software would be greater than the costs.

The Department believes that the economic impacts that were projected at the time of the amendments of this rule are accurate.

Sales of Prescription Drugs and Prosthetic Appliances

Amended: R15-5-156

R15-5-156 was also amended effective September 10, 2005. The Department did not anticipate a significant economic impact to Arizona businesses or consumers arising from the rulemaking, although there was a potential positive impact upon these persons due to clarification regarding the tax-exempt status of certain homeopathic remedies. The new rulemaking reflected already-existing Department policy and interpretation. The amendments would benefit both the agency and the public by making the rule conform to current statute and rulemaking guidelines, making the rule more accurate as well as clearer and easier to understand.

The Department believes that the economic impacts that were projected at the time of the amendments of this rule are accurate.

Sale of Photography

Amended: R15-5-150

R15-5-150 was amended effective February 6, 2006. The Department did not anticipate a significant economic impact resulting from adoption of the rule. The business activities that fell within the scope of this rulemaking were all currently subject to transaction privilege tax under either the retail or job printing classification, both of which have the same state tax rate. The rulemaking did, however, provide the public

with greater guidance on the parameters of these classifications as they apply to the activities. Because the amendments clarified and more accurately explained the scope and nature of the imposition of or exemptions from transaction privilege tax for sales of photography and printing, a minimal impact was anticipated for certain vendors due to increased compliance measures. The Department expected that the benefits of the amended rules to the public and the agency from achieving a better understanding of the exemptions would be greater than the costs.

The Department believes that the economic impacts that were projected at the time of the amendments of this rule are accurate.

General Retail Rules

Amended

R15-5-101

R15-5-103

R15-5-104

R15-5-105

R15-5-106

R15-5-110

R15-5-111

R15-5-113

These rules were amended effective December 4, 2006. The Department expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions from taxpayers, businesses, and tax professionals on issues that are addressed by each rule.

The Department anticipated that businesses subject to tax under the retail classification or subject to use tax might see a slight increase or decrease in the amount of taxes remitted to the Department. This was because the increased clarification of these rules would result in increased compliance with the applicable tax laws. Taxpayers who had been inaccurately calculating their tax liability to their detriment might be entitled to tax refunds. The increased clarification might also result in tax savings from spending less time obtaining advice from tax professionals.

Individuals and consumers of the small businesses affected by this rulemaking were thought to possibly see an increase or decrease in taxes paid on the sale of tangible personal property, assuming that the business was not previously in compliance with the applicable tax laws.

The Department believes that the economic impacts that were projected at the time that these rules were amended, renumbered, or added are accurate.

Sale of Restaurant Accessories; Warranty or Service Provisions and Contracts

Amended

R15-5-135

R15-5-137

R15-5-138

These rules were amended effective April 7, 2007. The Department anticipated that businesses subject to tax under the retail classification or subject to use tax may see a slight increase or decrease in the amount of taxes remitted to the Department. This was because the increased clarification of these rules would result in increased compliance with the applicable tax laws. Taxpayers who had been inaccurately calculating their tax

liability to their detriment might be entitled to tax refunds. The increased clarification might also result in tax savings from spending less time obtaining advice from tax professionals.

Individuals and consumers of the small businesses affected by this rulemaking were thought to possibly see an increase or decrease in taxes paid on the sale of tangible personal property, assuming that the business was not previously in compliance with the applicable tax laws.

The Department believes that the economic impacts that were projected at the time that these rules were amended, renumbered, or added are accurate.

Sales by Businesses in Federal Areas; Nonprofit Organizations

Amended

R15-5-180

R15-5-182

R15-5-180 and R15-5-182 were amended effective April 7, 2007. The Department anticipated minimal benefits from time saved by customer service and taxpayer assistance personnel in answering questions on issues that are addressed by each rule. In addition, the clarification and deletion of the language regarding state recognition of nonprofit organizations was expected to eliminate nonprofit taxpayer requests to the Audit Division of the Department for unnecessary clarification.

The Department did not anticipate any effect on the revenues or payroll expenditures of employers who were subject to the rulemaking. Some nonprofit organizations were expected to have minimal cost savings since they no longer would be required to prepare for and seek state certification of their tax exempt status.

The Department believes that the economic impacts that were projected at the time that these rules were amended, renumbered, or added are accurate.

2. Rules in A.A.C. Title 15, Chapter 1, Article 4

R15-5-404 was last amended effective September 22, 1997. An economic impact statement was prepared for the rule. The economic impact statement said that the rule would result in the Department incurring the costs to meet the numerous APA requirements, while it would also result in time and cost savings to the Department since it would not be necessary for personnel to explain to taxpayers the requirements and procedures addressed in the rule. Other state agencies would incur the cost of reviewing, analyzing, noticing and printing the rule, while minimal costs would be incurred by state agencies in obtaining copies of the rule.

The Department also expected that the rule amendment would have no direct or indirect impact on consumers since compliance with the transaction privilege tax rules are the responsibility of the vendor, not the purchaser.

The Department expected small businesses to benefit both directly and indirectly from the increased clarity of the amusement classification with the amendment of the rule.

The Department believes that the economic impacts that were projected at the time of the amendments are accurate.

R15-5-403 and R15-5-406 were last amended effective April 7, 2007. The Department anticipated minimal benefits from time saved by customer service and

taxpayer assistance personnel in answering questions on issues that are addressed by each rule.

The Department did not anticipate any effect on the revenues or payroll expenditures of employers who were subject to the rulemaking.

The Department believes that the economic impacts that were projected at the time that these rules were amended, renumbered, or added are accurate.

I. Business Competitiveness Analysis:

The Arizona Department of Revenue has not received any analysis that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states during the past five years.

J. Previous Five Year Review Report

In the previous five year review, the Department considered proposed action for thirteen (13) rules. In addition, the Department intended to amend eleven (11) rules to comply with the Secretary of State's guidelines. Due to the rules moratorium, those anticipated amendments were not made. The Department did not seek an exception to the rules moratorium because it did not have proper justification to do so under the previous Executive Orders. However, the Department anticipates seeking an exception to the rules moratorium under the current Executive Order by September 30, 2016.

K. Cost/Benefit Analysis

Once these rules are amended, the probable benefits of all the rules within this state will outweigh the probable costs and all the rules will impose the least burden and costs to persons regulated by them, including paperwork and other costs necessary to achieve the underlying regulatory objective.

L. Stringency Compared with Federal Law

The rules are based on state law. There are no federal statutes or regulations with which the rules would be compared for stringency.

M. Compliance with A.R.S. § 41-1037 (for Rules Adopted after July 29, 2010)

None of the rules require the issuance of a regulatory permit, license or agency authorization, and none of the rules were adopted after July 29, 2010.

N. Proposed Course of Action:

1. The Department of Revenue proposes no changes to the following rules:

R15-5-101	Sales for Resale or Lease
R15-5-102	Casual Sales
R15-5-103	Sale of Business Enterprises
R15-5-105	Services in Connection with Retail Sales
R15-5-106	Finance Charges in Connection with Retail Sales
R15-5-110	Lease-purchase Agreements
R15-5-111	Consignment Sales
R15-5-112	Sales by Auctioneers
R15-5-113	Sales by Trustees, Receivers, and Assignees

R15-5-127	Sales of Fuel
R15-5-135	Sales of Restaurant Accessories
R15-5-137	Warranty or Service Provisions and Tangible Personal Property Used in Conjunction with Warranty or Service Provisions
R15-5-138	Warranty or Service Contracts and Tangible Personal Property Used in Conjunction with Warranty or Service Contracts
R15-5-154	Computer Hardware and Software
R15-5-156	Sales of Prescription Drugs and Prosthetic Appliances
R15-5-158	Postage Stamps
R15-5-174	Sales to Non-U.S. Citizens
R15-5-180	Sales by Businesses in Federal Areas
R15-5-182	Nonprofit Organizations
R15-5-403	Amusement Devices
R15-5-404	Other Income
R15-5-406	Health or Fitness Establishments and Private Recreational Establishments

2. The following rules contain language that does not meet the requirements of the Secretary of State. These rules are either not written in the active voice or in the present tense, or both.

R15-5-121	Sales of Fuel Used in Manufacturing
R15-5-122	Articles Incorporated into a Manufactured Product
R15-5-123	Sale of Tools and Supplies to Businesses
R15-5-126	Manufacturing Labor

R15-5-131	Lay-away Sales
R15-5-136	Returnable Containers
R15-5-157	Membership Fees
R15-5-170	Interstate and Foreign Transactions
R15-5-172	Sales by Florists
R15-5-173	Sales of Property Subsequently Taken Out-of-state
R15-5-181	Governmental Organizations

Analysis of Individual Rules

R15-5-101 Sales for Resale or Lease

B. Objective: This rule informs taxpayers of the exclusions from the retail classification of sales for resale or lease.

R15-5-102 Casual Sales

B. Objective: This rule informs taxpayers that gross receipts from a casual sale are not subject to tax under the retail classification.

R15-5-103 Sale of Business Enterprises

B. Objective: This rule informs taxpayers that gross receipts from the sale of a business as a going concern are not taxable.

R15-5-104 Service Businesses

B. Objective: This rule explains to taxpayers when the sale of tangible personal property to or by a person engaged in a professional or personal service occupation or business is taxable and when it is not taxable.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, subsections (A) and (B) are repetitive and therefore confusing.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because subsections (A) and (B) are repetitive and therefore confusing.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to eliminate the repetitive language in subsections (A) and (B).

R15-5-105 Services in Connection with Retail Sales

B. Objective: This rule explains to taxpayers when a charge for a service in connection with a retail sale is taxable and when it is not taxable.

R15-5-106 Finance Charges in Connection with Retail Sales

B. Objective: This rule explains to taxpayers the circumstances under which gross receipts from finance charges, carrying charges, or interest charges are not taxable.

R15-5-110 Lease-purchase Agreements

B. Objective: This rule informs taxpayers that income derived from a lease-purchase agreement is taxable under the personal property rental classification, while payments received after conversion from a lease to a purchase are taxable under the retail classification.

R15-5-111 Consignment Sales

B. Objective: This rule informs taxpayers that gross receipts from consignment sales are taxable under the retail classification.

R15-5-112 Sales by Auctioneers

B. Objective: This rule informs taxpayers that gross receipts from the sale of tangible personal property by an auctioneer are taxable under the retail classification.

R15-5-113 Sales by Trustees, Receivers, and Assignees

B. Objective: This rule explains to taxpayers when gross receipts from the sale of tangible personal property by a trustee, receiver, or assignee are taxable and when they are not taxable under the retail classification.

R15-5-120 Exempt Sales of Machinery or Equipment

B. Objective: This rule explains to taxpayers the meaning of "manufacturing" as it is used under the retail classification and identifies what is not included in the meaning. Additionally, this rule informs taxpayers that gross receipts from the sale of repair or replacement parts for exempt machinery or equipment are not taxable under the retail classification.

C. Effectiveness: This rule is partially effective. However, it fails to define "processing". Many questions are raised as to the distinctions between "manufacturing" and "processing." The addition of a definition of "processing" would greatly increase the effectiveness of the rule.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it fails to define the term "processing."

N. Proposed Cause of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines and to define "processing".

R15-5-121 Sales of Fuel Used in Manufacturing

B. Objective: This rule informs taxpayers that the sale of fuel used or consumed in a manufacturing process is taxable under the retail classification.

R15-5-122 Articles Incorporated into a Manufactured Product

B. Objective: This rule informs taxpayers that sales of articles to be incorporated into a fabricated or manufactured product are considered to be sales for resale and are not taxable under the retail classification.

R15-5-123 Sale of Tools and Supplies to Businesses

B. Objective: This rule informs taxpayers that the sale of tools, supplies, and other articles to be used or consumed by persons in the operation of their businesses, and not for resale, are taxable under the retail classification.

R15-5-126 Manufacturing Labor

B. Objective: This rule informs taxpayers that the cost of labor employed in manufacturing, processing, or fabricating tangible personal property is included in the gross receipts derived from a sale of tangible personal property and is taxable under the retail classification.

R15-5-127 Sales of Fuel

B. Objective: This rule explains to taxpayers when gross receipts from the sale of fuel are taxable and when they are not taxable.

R15-5-128 Electric Power Transmission and Distribution

B. Objective: This rule explains to taxpayers when gross receipts from the sale of machinery, equipment, or transmission lines for direct use in a transmission system or for use in a distribution system are taxable and when they are not taxable under the retail classification.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines and is not clear that it applies to the utilities classification.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it is not clear that it applies to the utilities classification.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines. Additionally, the rule should be made clear that it only applies to sales to businesses taxable under the utilities classification.

R15-5-129 Discounts, Refunds, and Coupon Redemption

B. Objective: This rule explains to taxpayers when cash discounts, refunds and coupons are taxable and when they are not taxable under the retail classification.

C. Effectiveness: This rule is partially ineffective in meeting the stated objective for the reasons stated in paragraph (F).

D. Consistency: Subsection (D) of this rule is inconsistent with A.R.S. § 42-5001(7).

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines and it incorrectly implies that coupons issued by manufacturers result in refunds when used by customers.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it is inconsistent with A.R.S. § 42-5001(7) and it incorrectly implies that coupons issued by manufacturers result in refunds when used by customers.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines and to clarify the difference between coupons issued by manufacturers and by retailers.

R15-5-131 Lay-away Sales

B. Objective: This rule describes to taxpayers the time at which gross receipts from lay-away agreements are taxable under the retail classification.

R15-5-132 Retail Sales with Trade-ins

B. Objective: This rule informs taxpayers that when a retailer accepts tangible personal property as a trade-in, the dollar amount of the trade-in is deductible from the gross receipts of the sale.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines. Additionally, the rule refers to the dollar amount of the trade-in, when it should refer to the value of the trade-in. The rule does not specifically address situations in which a lien exists or property is leased. While Arizona Transaction Privilege Tax Ruling TPR 96-1 clarifies these issues, the rule should also clarify these issues.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it refers to the dollar amount of the trade-in rather than the value of the trade-in and it does not address situations in which a lien exists or property is leased.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines. Additionally, the rule should be amended to address situations in which a lien exists or property is leased. While Arizona

Transaction Privilege Tax Ruling TPR 96-1 clarifies these issues, the rule should also clarify these issues.

R15-133 Delivery Charges in Connection with Retail Sales

B. Objective: This rule explains to taxpayers when delivery and freight charges are taxable and when they are not taxable under the retail classification.

C. Effectiveness: This rule is partially effective in meeting the stated objective. However, it fails to address the issues of shipping and handling charges and how they relate to freight charges.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it does not address the relationship between freight and shipping costs, and shipping and handling costs.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it does not address the relationship between freight and shipping costs, and shipping and handling costs.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to further clarify the relationship between freight and shipping costs, and shipping and handling costs.

R15-5-134 Sales of Containers, Bottles, and Labels

B. Objective: This rule explains to taxpayers when the sale of containers, bottles, labels, and tags are taxable and when they are not taxable under the retail classification.

C. Effectiveness: This rule is partially effective in meeting the stated objectives. Although it addresses containers, it fails to specifically address items such as crates and boxes used in the manufacturing, selling and delivery of products.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines. Additionally, while it addresses containers, it fails to specifically address items such as crates and boxes used in the manufacturing, selling and delivery of products.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it fails to address items such as crates and boxes used in manufacturing, selling and delivery of products.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines. Additionally, while the rule addresses containers, it should also address items such as crates and boxes used in the manufacturing, selling and delivery of products.

R15-5-135 Sales of Restaurant Accessories

B. Objective: This rule explains to taxpayers when the gross receipts from the sale of restaurant accessories are taxable and when they are not taxable under the retail classification.

R15-5-136 Returnable Containers

B. Objective: This rule explains to taxpayers when the gross receipts from the deposits on returnable containers are taxable and when they are not taxable under the retail classification.

R15-5-137 Warranty or Service Provisions and Tangible Personal Property Used in Conjunction with Warranty or Service Provisions

B. Objective: This rule explains to taxpayers when gross receipts from the sale of warranty or service provisions, and tangible personal property used in conjunction with warranty

or service provisions, are taxable and when they are not taxable under the retail classification.

R15-5-138 Warranty or Service Contracts and Tangible Personal Property Used in Conjunction with Warranty or Service Contracts

B. Objective: This rule explains to taxpayers when gross receipts from the sale of warranty or service contracts, and tangible personal property used in conjunction with warranty or service contracts, are taxable and when they are not taxable under the retail classification.

R15-5-150 Sale of Photography

B. Objective: This rule explains to taxpayers when gross receipts from the sale of photography are taxable and when they are not taxable under the retail classification.

C. Effectiveness: This rule is partially effective in meeting the stated objective. However, the rule contains references to statutes that have been repealed.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to remove any references to the repealed statutes.

R15-5-151 Artists

B. Objective: This rule explains to taxpayers when gross receipts from sales by artists, and supplies and materials sold to artists, are taxable and when they are not taxable under the retail classification.

C. Effectiveness: This rule is partially effective in meeting the stated objective. However, the rule contains an incorrect reference to another rule.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines and it contains an incorrect reference to another rule.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it contains an incorrect reference to another rule.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines and to correct the incorrect reference to another rule.

R15-5-152 Tangible Personal Property Used in Soil Remediation Activities

B. Objective: This rule explains to taxpayers when gross receipts from the sale of tangible personal property incorporated or fabricated into an item needed under an environmental clean-up contract are taxable and when they are not taxable under the retail classification.

C. Effectiveness: This rule is partially effective in meeting the stated objectives. However, it contains an incorrect statute citation.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines and contains an incorrect statutory reference.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it contains an incorrect statutory reference.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines and to correct the incorrect statutory reference from A.R.S. § 42-1310.16(B)(6) to A.R.S. § 42-5075(B)(6).

R15-5-153 Four-inch Pipes or Valves

B. Objective: This rule informs taxpayers that the gross receipts from the sale of pipes, valves, or fire hydrants with an inside diameter of four inches or more are deductible

from the tax base if the pipes, valves, or fire hydrants are to be used to transport oil, natural gas, artificial gas, water, or coal slurry.

C. Effectiveness: The rule is partially effective in meeting the stated objectives. However, it fails to address statutory changes regarding equipment necessary to operate the pipes and valves and the issue of sewage transported by these pipes.

F. Clarity, Conciseness and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines and does not address statutory changes regarding equipment necessary to operate the pipes and valves and the issue of sewage transported by these pipes.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it does not address statutory changes regarding equipment necessary to operate the pipes and valves and the issue of sewage transported by these pipes.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines and to address statutory changes regarding equipment necessary to pipes and the issue of sewage transported by these pipes.

R15-154 Computer Hardware and Software

B. Objective: This rule explains to taxpayers when gross receipts from the sale of computer hardware and software are taxable and when they are not taxable under the retail classification.

R15-5-156 Sales of Prescription Drugs and Prosthetic Appliances

B. Objective: This rule explains to taxpayers the exemptions for prescription drugs, prosthetic appliances, prescription eyewear, insulin and certain related supplies, hearing aids, and durable medical equipment.

R15-5-157 Membership Fees

B. Objective: This rule informs taxpayers that membership, admission, and other fees charged by a limited-access business are gross receipts that are subject to tax under the retail classification.

R15-5-158 Postage Stamps

B. Objective: This rule explains to taxpayers when the gross receipts from the sale of postage stamps are taxable and when they are not taxable under the retail classification.

R15-5-170 Interstate and Foreign Transactions

B. Objective: This rule informs taxpayers of the conditions under which gross receipts from the sale of tangible personal property made in interstate or foreign commerce are not taxable under the retail classification.

R15-5-171 Sales to a Common Carrier

B. Objective: This rule explains to taxpayers when gross receipts from sales made to a common carrier are not taxable under the retail classification.

C. Effectiveness: This rule is partially effective. However, it should include other instances of a sale to a common carrier.

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it fails to include other instances of a sale to a common carrier.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines and to include other instances of a sale to a common carrier.

R15-5-172 Sales by Florists

B. Objective: This rule explains to taxpayers when gross receipts from sales made by an Arizona florist are taxable and when they are not taxable under the retail classification.

R15-5-173 Sales of Property Subsequently Taken Out-of-state

B. Objective: This rule informs taxpayers that gross receipts from the sale of tangible personal property made by an Arizona vendor to purchasers who subsequently take the property out-of-state are taxable under the retail classification, unless otherwise specifically exempted by statute.

R15-5-174 Sales to Non-U.S. Citizens

B. Objective: This rule informs taxpayers that gross receipts from sales to non-U.S. citizens are taxable under the retail classification, unless otherwise exempted by statute.

R15-5-180 Sales by Businesses in Federal Areas

B. Objective: This rule informs taxpayers that gross receipts from sales by businesses that are not operated by or as an agency of the federal government, located on military bases or other federal areas, are taxable under the retail classification.

R15-5-181 Governmental Organizations

B. Objective: This rule explains to taxpayers when gross receipts from the sale of tangible personal property to or by a governmental organization are taxable and when they are not taxable under the retail classification.

R15-5-182 Nonprofit Organizations

B. Objective: This rule explains to taxpayers when gross receipts from the sale of tangible personal property to or by a non-profit charitable organization are taxable and when they are not taxable under the retail classification.

R15-5-183 Exempt Sales to Health Organizations

B. Objective: This rule informs taxpayers that gross receipts from the sale of tangible personal property to qualifying healthcare organizations are not taxable under specific tax classifications if such sales are made pursuant to statutory provisions. The rule also informs health organizations of the procedures to be followed in order to qualify for the exemption.

D. Consistency: This rule is inconsistent with statutory changes made in A.R.S. § 42-5001(9)(b) and § 42-5001(12)(d).

K. Cost/Benefit Analysis: This rule does not impose the least burden and cost to persons regulated by it because it fails to recognize a change in A.R.S. § 42-5001(9)(b) that provides that a qualifying community health center includes clinics that are being constructed and to recognize a change in A.R.S. § 42-5001(12)(d) that provides that a qualifying hospital includes a facility that is under construction and that on completion will meet the definition of a qualifying hospital.

N. Proposed Cause of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines. Additionally, the Department proposes to amend the rule to recognize a change in A.R.S. § 42-5001(9)(b) that provides that a qualifying community health center includes clinics that are being constructed and to recognize a change in A.R.S. § 42-5001(12)(d) that provides that a qualifying hospital in-

cludes a facility that is under construction and that on completion will meet the definition of a qualifying hospital.

R15-5-403 Amusement Devices

B. Objective: This rule provides taxpayers with examples of amusement devices and defines the tax base for the business of operating amusement devices.

R15-5-404 Other Income

B. Objective: This rule informs taxpayers that gross receipts from sales of certain items are included in the tax base under the retail classification.

R15-5-406 Health or Fitness Establishments and Private Recreational Establishments

B. Objective: This rule explains to taxpayers when the proceeds from membership fees and initiation fees charged by a health or fitness establishment, or a private recreational establishment, are to be excluded from the tax base under the amusement classification. In addition, this rule explains that the gross proceeds of sales or gross income derived from other businesses that are located on the premises of a health, fitness or recreational business will not be considered if it is separate and independent of the health, fitness or recreational business.

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

Authority: A.R.S. § 42-1004

The provisions in these rules became effective August 1, 1976, unless otherwise noted in the Historical Note following the rule.

ARTICLE 1. RETAIL CLASSIFICATION

New Article 1, consisting of Section R15-5-151, adopted effective April 15, 1993 (Supp. 93-2).

Former Article 1, consisting of Sections R15-5-101 through R15-5-104, repealed effective April 13, 1987.

Section
R15-5-101. Sales for Resale or Lease
R15-5-102. Casual Sales
R15-5-103. Sale of Business Enterprises
R15-5-104. Service Businesses
R15-5-105. Services in Connection with Retail Sales
R15-5-106. Finance Charges in Connection with Retail Sales
R15-5-110. Lease-purchase Agreements
R15-5-111. Consignment Sales
R15-5-112. Sales by Auctioneers
R15-5-113. Sales by Trustees, Receivers, and Assignees
R15-5-120. Exempt Sales of Machinery or Equipment
R15-5-121. Sales of Fuel Used in Manufacturing
R15-5-122. Articles Incorporated into a Manufactured Product
R15-5-123. Sale of Tools and Supplies to Businesses
R15-5-126. Manufacturing Labor
R15-5-127. Sales of Fuel
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ARTICLE 1. RETAIL CLASSIFICATION

R15-5-101. Sales for Resale or Lease

A. Gross receipts from the sale of tangible personal property to be resold by the purchaser in the ordinary course of business are not subject to tax under the retail classification.

B. Gross receipts from the sale of tangible personal property to be leased by a person in the business of leasing such personal property are not subject to tax under the retail classification.

C. Gross receipts from the sale of tangible personal property to a lessor of real property are subject to tax if:

1. The tangible personal property is incorporated into, or leased in conjunction with, the real property; and
2. The rental of the tangible personal property is not separately stated as part of the real property lease transaction.

D. Gross receipts from the sale of repair or replacement parts for tangible personal property that is to be leased by a person engaged in the business of leasing such tangible personal property are not subject to tax under the retail classification.

Historical Note

Amended effective November 7, 1978 (Supp. 78-6). Renumbered from R15-5-1811 and amended effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 12 A.A.R. 4099, effective December 4, 2006 (Supp. 06-4).

R15-5-102. Casual Sales

Gross receipts from a casual sale, as defined in R15-5-2001, are not taxable under the retail classification.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-103. Sale of Business Enterprises

Gross receipts from the sale of a business as a going concern are not subject to tax if the sale is for the business as an operating enterprise.

Historical Note

Renumbered from R15-5-1817 and amended effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 12 A.A.R. 4099, effective December 4, 2006 (Supp. 06-4).

R15-5-104. Service Businesses

A. Gross receipts from the sale of tangible personal property to a person engaged in a professional or personal service occupation or business are subject to tax if the tangible personal property is used or consumed in the performance of the service or is sold only as an inconsequential element of the nontaxable service provided.

B. Gross receipts from the sale of tangible personal property, by a person engaged in a professional or personal service occupation or business, are not subject to tax if the property is sold only as an inconsequential element of the nontaxable service provided.

C. Sales of tangible personal property are inconsequential elements of the service if:

1. The purchase price of the tangible personal property to the person rendering the services represents less than 15% of the charge, billing, or statement rendered to the purchaser in connection with the transaction;
2. At the time of the sale, the tangible personal property transferred is not in a form that is subject to retail sale; and
3. The charge for the tangible personal property is not separately stated on the invoice.

D. A person engaged in both a retail business and a service business shall keep records of purchases of tangible personal property sufficient to establish whether the property was resold as a taxable retail sale.

Historical Note

Renumbered from R15-5-1805 and amended effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 12 A.A.R. 4099, effective December 4, 2006 (Supp. 06-4).

R15-5-105. Services in Connection with Retail Sales

Gross receipts from services rendered in addition to selling tangible personal property at retail are subject to tax unless the charge for service is shown separately on the sales invoice and records.

Historical Note

Renumbered from R15-5-1815 and amended effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 12 A.A.R. 4099, effective December 4, 2006 (Supp. 06-4).

R15-5-106. Finance Charges in Connection with Retail Sales

Gross receipts from finance, carrying charges, or interest charges incurred in connection with a retail sale of tangible personal property are not subject to tax if:

1. The charges are separately stated as part of the sales transaction; and
2. The charges result from the sale of such property on credit or under an installment contract.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 12 A.A.R. 4099, effective December 4, 2006 (Supp. 06-4).

R15-5-110. Lease-purchase Agreements

A. Gross income derived from the leasing of tangible personal property under a lease-purchase agreement is subject to tax under the personal property rental classification.

B. Payments received after the conversion from a lease to a purchase are subject to tax under the retail classification.

C. Gross receipts from the sale of tangible personal property include conversion charges paid or incurred at the time the lease is converted to a purchase.

Historical Note

Renumbered from R15-5-1809 and amended effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 12 A.A.R. 4099, effective December 4, 2006 (Supp. 06-4).

R15-5-111. Consignment Sales

A. The following definitions apply for purposes of this rule:

1. "Consignee" means the party that is in the business of selling tangible personal property belonging to a consignor.
2. "Consignor" means the party with the legal right to contract the services of the consignee to sell tangible personal property on behalf of the consignor.

B. Gross receipts from consignment sales are subject to tax under the retail classification.

C. A consignee shall obtain a transaction privilege tax license before making consignment sales.

Historical Note

Renumbered from R15-5-1808 and amended effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 12 A.A.R. 4099, effective December 4, 2006 (Supp. 06-4).

R15-5-112. Sales by Auctioneers

A. Gross receipts from the sales of tangible personal property by an auctioneer are subject to tax under the retail classification.

B. An auctioneer shall obtain a transaction privilege tax license prior to conducting an auction.

Historical Note

Renumbered from R15-5-1834 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-113. Sales by Trustees, Receivers, and Assignees

A. Gross receipts from the sale of tangible personal property by a trustee, receiver, or assignee are subject to tax if the sale of the property in the hands of the owner would be subject to tax.

B. Gross receipts from the sale of tangible personal property by a trustee, receiver, or assignee are not subject to tax if the sale of the property in the hands of the owner would not be subject to tax.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 12 A.A.R. 4099, effective December 4, 2006 (Supp. 06-4).

R15-5-120. Exempt Sales of Machinery or Equipment

A. Machinery or equipment used in manufacturing or processing includes machinery or equipment that constitutes the entire primary manufacturing or processing operation from the initial stage where actual processing begins through the completion of the finished end product, processing, finishing, or packaging of articles of commerce. Manufacturing is the performance as a business of an integrated series of operations which place tangible personal property in a form, composition, or character different from that in which it was acquired and transforms it into a different product with a distinctive name, character, or use.

B. Gross receipts from the sale of repair or replacement parts for exempt machinery or equipment are not subject to the tax under the retail classification. Repair or replacement parts are defined as those individual component and constituent items which, together, comprise exempt machinery or equipment.

C. In establishing the exempt sale of machinery or equipment, the seller shall keep adequate documentation, pursuant to statutory requirements and as delineated in R15-5-2214, for the statutorily required period of time.

Historical Note

Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Amended paragraphs (9) and (10) effective March 18, 1981 (Supp. 81-2). Renumbered from R15-5-1822 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-121. Sales of Fuel Used in Manufacturing

The sale of fuel used or consumed in a manufacturing process is taxable. The fuel is not considered to be incorporated into the manufactured product.

Historical Note

Renumbered from R15-5-1830 effective August 9, 1993 (Supp. 93-3).

R15-5-122. Articles Incorporated into a Manufactured Product

A. Sales of articles to be incorporated into a fabricated or manufactured product are considered to be sales for resale and, therefore, exempt. For example, the sale of wood to a furniture manufacturer is a sale for resale.

B. In order for the exemption to apply, the materials must actually become a part of the finished product. Supplies which are consumed in the manufacturing process do not qualify.

Historical Note

Renumbered from R15-5-1839 effective August 9, 1993 (Supp. 93-3).

R15-5-123. Sale of Tools and Supplies to Businesses

The sale of tools, supplies, and other articles to be used or consumed by persons in the operation of their businesses, and not for resale, are taxable as retail sales.

Historical Note

Renumbered from R15-5-1849 effective August 9, 1993 (Supp. 93-3).

R15-5-126. Manufacturing Labor

The cost of labor employed in manufacturing, processing, or fabricating tangible personal property shall not be allowed as a deduction from the gross receipts derived from a sale of such property.

Historical Note

Renumbered from R15-5-1848 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-127. Sales of Fuel

A. In this Section, "aviation fuel" and "dyed diesel fuel" have the same meanings as prescribed in A.R.S. §§ 28-101 and 28-5601.

B. Gross receipts from the sale of dyed diesel fuel are subject to transaction privilege tax.

C. Gross receipts from the sale of liquefied petroleum gas or natural gas used to propel a motor vehicle are exempt from transaction privilege tax.

D. Aviation fuel is subject to tax under A.R.S. § 28-8344 only.

E. Gross receipts from the retail sale of jet fuel are subject to the jet fuel excise and use tax under A.R.S. § 42-5352.

Historical Note

Renumbered from R15-5-3004 and amended effective August 9, 1993 (Supp. 93-3). Section amended by final rulemaking at 10 A.A.R. 4480, effective December 4, 2004 (Supp. 04-4).

R15-5-128. Electric Power Transmission and Distribution

A. Gross receipts from the sale of machinery, equipment, or transmission lines for direct use in a transmission system are deductible from the tax base. Gross receipts from the sale of machinery, equipment, or lines for use in a distribution system are taxable.

B. Machinery and equipment used to facilitate the production of voltage up to and including 34,500 volts shall be considered part of a distribution system.

1. Gross receipts from the sale of such equipment are subject to transaction privilege tax.
2. If tangible personal property was purchased as exempt, subsequent nonexempt use shall subject the gross purchase price to use tax according to statutory provisions.

C. Machinery and equipment used to facilitate the production of voltage above 34,500 volts shall be categorized as part of a transmission or distribution system based on the following definitions.

1. "Transmission system" means:
   a. All land, conversion structures, and equipment employed at a primary source of supply to change the voltage or frequency of electricity for the purpose of its more efficient or convenient transmission;
   b. All land, structures, lines, switching and conversion stations, high tension apparatus and their control and protective equipment between a generating or receiving point and the entrance to a distribution center or wholesale point; and

c. All lines and equipment whose primary purpose is to augment, integrate, or tie together the sources of power supply.

2. "Distribution system" means all land, structures, conversion equipment, lines, line transformers, and other facilities employed between the primary source of supply and of delivery to customers, which are not includible in a transmission system whether or not such land, structures, and facilities are operated as part of a transmission system or as part of a distribution system. Stations which change electricity from transmission to distribution voltage shall be classified as distribution stations.

3. "Primary source of supply" means a generating station or point of receipt in the case of purchased power.

4. Dual-use equipment shall be designated as follows:

a. If poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys, and rights-of-way shall be classified as a transmission system. The conductors, crossarms, braces, grounds, tiewire, insulators, and other similar tangible personal property shall be classified as transmission or distribution facilities, according to the purpose for which they are used.

b. If underground conduit contains both transmission and distribution conductors, the underground conduit and the right-of-way shall be classified as a distribution system. The conductors shall be classified as transmission or distribution facilities according to the purpose for which they are used.

c. Based on statutory provisions, transformers and control equipment utilized operationally at transmission substation sites are considered to be a part of a transmission system and, therefore, are exempt from transaction privilege and use tax.

D. Machinery, equipment, or transmission lines for direct use in a transmission system are only those which are recorded as being part of a transmission system in accordance with the definitions in subsection (C).

1. Gross receipts from the sale of such equipment are exempt from the tax.

2. If such machinery and equipment is removed from inventory to be used as part of a distribution system, the purchase price is subject to use tax.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-129. Discounts, Refunds, and Coupon Redemption

A. Cash discounts allowed the purchaser for timely payment are permissible as deductions from the sale price.

B. Refunds in cash or credit given on returned merchandise are considered to be a reduction of sales.

C. When coupons issued by a manufacturer are redeemed by a retailer the amounts refunded to the purchaser are not permissible as deductions from the selling price of articles sold by the retailer. In these cases, the gross selling price is taxable.

D. Coupons issued by a retailer and later redeemed by the retailer as a discount on the price of merchandise sold by him are considered a reduction of the selling price. In such cases the net selling price is subject to tax.

Historical Note

Renumbered from R15-5-1840 effective August 9, 1993 (Supp. 93-3).

R15-5-131. Lay-away Sales

Gross receipts from lay-away agreements shall be taxable when title or possession transfers to the purchaser or at the time receipts from the transaction are determined to be nonrefundable, whichever occurs first.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-132. Retail Sales with Trade-ins

A. When a retailer accepts tangible personal property as a trade-in for part or full payment on the sale of tangible personal property, the dollar amount of the payment represented by the trade-in is deductible from the retailer's gross receipts from that sale.

B. A trade-in deduction shall be limited to the amount of the retailer's gross receipts on that sale.

C. When the property traded in is subsequently sold at retail, the gross receipts from the transaction are taxable.

Historical Note

Renumbered from R15-5-1818 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-133. Delivery Charges in Connection with Retail Sales

A. A charge by a retailer for delivery from the retailer's location to the purchaser's location, if separately stated on the sales invoice, is not taxable.

B. When the freight cost is incurred any time prior to the time of the retail sale, such cost is part of the gross sale and, therefore, subject to the tax.

Historical Note

Renumbered from R15-5-1820 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-134. Sales of Containers, Bottles, and Labels

A. The sale of containers and bottles is considered a sale for resale only when the purchaser is to transfer the containers with their contents in future sales.

B. In cases where the containers are not subsequently sold as part of the merchandise, such sales are deemed to be taxable retail sales.

C. The sale of labels to a purchaser who affixes them to nonreturnable containers to be resold is considered to be a sale for resale and is not taxable.

D. In cases where the containers are returnable and a new label is to be affixed, each time the container is refilled, the sale of the labels is also considered to be a sale for resale.

E. The sale of analysis tags or other labels to be attached to containers of feed and sold along as part of the article is a sale for resale.

F. However, the sale of items such as price tags, shipping tags, and advertising matter used in connection with the subsequent sale is taxable as a retail sale.

Historical Note

Renumbered from R15-5-1829 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-135. Sales of Restaurant Accessories

A. Gross receipts from the sale of disposable containers, paper napkins, and other similar food accessories to a person engaged in the restaurant business, who, in the regular course of business, transfers these accessories to facilitate the consumption of the food, drink, or condiment provided, are considered gross receipts from sales for resale.

B. Gross receipts from the sale of matchbooks, advertisement fliers, and other similar tangible personal property to a person engaged in the restaurant business, who transfers this property for the convenience, operation, or benefit of the restaurant business, are subject to tax.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 679, effective April 7, 2007 (Supp. 07-1).

R15-5-136. Returnable Containers

A. Gross receipts from deposits on sales of returnable containers which contain taxable food shall be taxable.

B. Deposit refunds paid to purchasers on the return of such containers shall be deductible from the retailer's tax base in the month refunded.

C. Gross receipts from deposits received on returnable containers which contain non-taxable food shall not be taxable. Therefore refunds paid on such deposits shall not reduce the tax base.

Historical Note

Renumbered from R15-5-1833 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-137. Warranty or Service Provisions and Tangible Personal Property Used in Conjunction with Warranty or Service Provisions

A. For purposes of this rule, the following definitions apply:

1. "Covered" means included in the warranty or service provision.
2. "Warranty or service provision" means a manufacturer's or vendor's warranty that is sold automatically with tangible personal property and, for no extra charge, applies to any tangible personal property used in the servicing of the provision.

B. An exclusion from gross receipts is not allowed for a warranty or service provision on the sale of tangible personal property if the property cannot be sold without the acceptance of the warranty or service provision.

C. A warranty or service provision is not considered a warranty or service contract under A.R.S. § 42-5061(A).

D. Tangible personal property sold in conjunction with the servicing of a warranty or service provision, but not covered by the provision, is a sale of tangible personal property that is subject to tax under the retail classification unless statutorily exempt.

E. Tangible personal property that is covered under a warranty or service provision and used in the servicing of the provision is not subject to use tax as the transaction privilege tax was paid when the tangible personal property was acquired.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 679, effective April 7, 2007 (Supp. 07-1).

R15-5-138. Warranty or Service Contracts and Tangible Personal Property Used in Conjunction with Warranty or Service Contracts

A. For purposes of this rule, the following definition applies:

"Covered" means included in the warranty or service contract for which the warranty or service contract holder does not pay a separate charge for any tangible personal property used in the servicing of the contract.

B. Gross receipts from the sale of warranty or service contracts are not subject to tax when the contracts are sold as a distinct and separate item and the charge for the warranty or service contract is stated separately on a sales invoice.

C. Tangible personal property sold in conjunction with the servicing of a warranty or service contract, but not covered by the contract, is a sale of tangible personal property that is subject to tax under the retail classification unless statutorily exempt.

D. Tangible personal property that is covered under a warranty or service contract, and used in the servicing of the contract, is subject to use tax unless transaction privilege tax was paid when the tangible personal property was acquired or the tangible personal property is otherwise statutorily exempt.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 679, effective April 7, 2007 (Supp. 07-1).

R15-5-150. Sale of Photography

A. In this Section:

1. "Motion picture" has the same meaning as prescribed in A.R.S. § 41-1517.
2. "Motion picture production company" has the same meaning as prescribed in A.R.S. § 41-1517.
3. "Photography" means the process of taking and supplying images to customers, using film, video, or another data storage medium.
4. "Qualified motion picture production company" means a motion picture production company that holds a valid certificate issued pursuant to A.R.S. § 42-5009(H), establishing the company's qualification for the A.R.S. § 42-5061(B)(23) exemption.

B. Gross income or gross proceeds derived from a sale of photography are subject to tax under this Article, unless, under A.A.C. R15-5-104(C), the sale of such photography is considered an inconsequential element of nontaxable activities that are associated with the sale. Examples of nontaxable activities that are associated with a sale of photography include research; script consulting; director, crew, and equipment charges; preproduction or postproduction charges; location scouting fees; and music charges. Activities that are associated with the sale of photography are nontaxable if one of the following applies:

1. The vendor is engaged in both a professional or personal service occupation or a service business under A.R.S. § 42-5061(A)(1) and the business of selling photography at retail; or
2. The activities are not part of the manufacture, creation, or fabrication of photography and are not otherwise subject to tax under another Article of this Chapter.

C. Gross income or gross proceeds derived from a sale of photography used directly in motion picture production by a qualified motion picture production company are exempt from tax under this Article pursuant to A.R.S. § 42-5061(B)(23).

Historical Note

Renumbered from R15-5-1836 and amended effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 11 A.A.R. 5493, effective February 6, 2006 (Supp. 05-4).

R15-5-151. Artists

A. Gross receipts from the sale of paintings, drawings, etchings, sculptures, craftwork, other artwork or reproductions of such items to final consumers shall be taxable under the retail classification if the person is making regular sales of these items.

B. Gross receipts from the sale of paints, canvasses, frames, sculpture ingredients, and other items which will become an integral part of the finished product shall not be taxable if sold to a creating artist who is regularly engaged in the business of creating and selling paintings, drawings, etchings, sculptures, craftwork, other artwork, or reproductions of such items. Sales of brushes, easels, tools, and similar items to be consumed by the creating artist shall be taxable.

C. Gross receipts from the sale by the creating artist of a painting, drawing, etching, sculpture, or a piece of craftwork that is not a reproduction of an original work shall not be taxable if:

1. The sale is a casual sale pursuant to the definition in R15-5-1812; or
2. The sale is of commissioned artwork by an individual artist. For purposes of this rule, "commissioned artwork" is a custom, one-of-a-kind art creation made by the individual artist pursuant to the particular requirements of a specific purchaser.

Historical Note

Adopted effective April 15, 1993 (Supp. 93-2). Section heading amended effective August 9, 1993 (Supp. 93-3).

Editor's Note: R15-5-1812, referenced in subsection (C)(1) above, was repealed. Please refer to R15-5-2001 for information about casual sales.

R15-5-152. Tangible Personal Property Used in Soil Remediation Activities

The gross receipts from the sale of tangible personal property incorporated or fabricated into any real property, structure, project, development or improvement under a contract specified in A.R.S. § 42-1310.16 (B)(6) are exempt from tax. The gross receipts from the sale of tangible personal property used in soil remediation activities but not incorporated or fabricated into any real property, structure, project, development or improvement are taxable.

Historical Note

Adopted effective December 11, 1998 (Supp. 98-4).

R15-5-153. Four-inch Pipes or Valves

Gross receipts from the sale of pipes, valves, or fire hydrants with an inside diameter of four inches or more are deductible from the tax base if the pipes, valves, or fire hydrants are to be used to transport oil, natural gas, artificial gas, water, or coal slurry.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-154. Computer Hardware and Software

A. Gross receipts derived from services rendered in whole or in part in connection with the sale of computer hardware are exempt, including gross receipts derived from charges imposed for professional and technological services such as analysis, design, support engineering services, classroom instruction, and data conversion services.

B. Except as provided in subsection (C), gross receipts derived from the sale of computer software programs are taxable, regardless of the method that a retail business uses to transfer the programs to its customers.

C. Gross receipts derived from charges imposed for the following business activities originate from nontaxable service activities and are therefore not taxable:

1. The original creation of an electronic data processing program for the specific use of an individual customer, or
2. The modification of a prewritten computer software program for the specific use of an individual customer, if the charge for the modification is shown separately on the sales invoice and records.

Historical Note

Renumbered from R15-5-1853 effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 11 A.A.R. 2950, effective September 10, 2005 (Supp. 05-3).

R15-5-156. Sales of Prescription Drugs and Prosthetic Appliances

A. In this Section:

1. "Drug" means an article that, according to federal or state law, is:
   a. Recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, official National Formulary, or any supplement to these documents; or
   b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; or
   c. Not food and is intended to affect the structure or any function of the body of humans or animals; or
   d. Intended for use as a component of any article specified in subsections (a), (b), or (c).
2. "Drug on a prescription" means prescription drug.
3. "Food" means an article used for food or drink for humans or animals, chewing gum, or an article used as a component of such an article.
4. "Hearing aid" means any wearable device designed as a remedy or to compensate for defective human hearing, including parts, attachments, accessories, and earmolds.
5. "Legend drug" means a drug that 21 U.S.C. 353(b)(4)(A) requires to bear the symbol "Rx only" before dispensing.
6. "Nonprescription product" means a drug or other article that can be purchased by the final consumer of the drug or article without a prescription, regardless of whether purchased on the advice or recommendation of a member of the medical, dental, or veterinarian profession. Examples include over-the-counter drugs and those dietary supplements, vitamins, minerals, herbs, and other similar supplements that do not qualify as prescription drugs.
7. "Over-the-counter drug" means a drug that is subject to federal labeling requirements in 21 CFR 201.66.
8. "Prescriber" means a member of the medical, dental, or veterinary profession authorized by federal or state law to prescribe a drug.
9. "Prescription" means an order for a drug issued in any form.
10. "Prescription drug" means a legend drug or a drug that, according to federal or state law, can be dispensed only:
    a. Upon a written prescription of a prescriber for the drug;

b. Upon an oral prescription by the prescriber for the drug that federal or state law requires be reduced promptly to a form of writing by the prescriber and then filed by a pharmacist or the prescriber; or

c. By refilling a written or oral prescription if refilling is authorized by the prescriber for the drug either in the original prescription or by oral order that is reduced promptly to writing and then filed by a pharmacist or the prescriber.

11. "Prescription eyeglasses" includes frames and other component parts of eyeglasses if purchased for use with prescription lenses.

12. "Prosthetic appliance" means an artificial device that fully or partially replaces a part or function of the human body or increases the acuity of a sense organ.

B. Gross receipts from sales of the following kinds of tangible personal property are not subject to tax:

1. Prescription drugs, including those used in the course of treating patients;
2. Medical oxygen, pursuant to A.R.S. § 42-5061(A)(8);
3. Insulin, insulin syringes, and glucose strips, whether or not prescribed;
4. Prosthetic appliances, prescribed or recommended by a statutorily-authorized individual;
5. Durable medical equipment, pursuant to A.R.S. § 42-5061(A)(13);
6. Prescription eyeglasses and contact lenses; and
7. Hearing aids. Batteries and cords are subject to tax.

C. Gross receipts from the sale of component and repair parts for any tangible personal property that is exempt under either subsection (B) or (F) are not subject to tax.

D. If a written prescription or recommendation is required to purchase tangible personal property, a vendor of the property shall maintain the prescription or recommendation as part of the vendor's records. The vendor's records for documenting sales shall provide reasonable detail to allow the Department, upon inspection, to identify property as exempt.

E. Gross receipts from the sale to the final consumer of nonprescription products and those medical supplies or appliances not provided for under subsection (B) are subject to tax.

F. Gross receipts from the sale of nonprescription products or other medical supplies or appliances to doctors, dentists, or veterinarians are subject to tax unless the sale qualifies as a sale for resale and the doctor, dentist, or veterinarian is a retailer in the business of reselling the property.

Historical Note

Renumbered from R15-5-1819 and amended effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 11 A.A.R. 2952, effective September 10, 2005 (Supp. 05-3).

R15-5-157. Membership Fees

A. Membership, admission, or other fees charged by a limited-access retail business shall be considered part of the taxable gross income of the business activity.

B. For purposes of this rule, "a limited-access retail business" means a business which does not sell to the general public but which charges a membership fee or a membership due in order to obtain access to the business or to obtain discounts or preferential treatment in the purchase or rental of tangible personal property from or through the business.

C. Gross income shall not include separately billed amounts paid to secure ownership interests or rights in the business which can be transferred or assigned.

Historical Note

Renumbered from R15-5-3036 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-158. Postage Stamps

A. A retailer's gross receipts from the sale of postage stamps are not included in the tax base under the retail classification if the stamps are sold for the purpose of transporting mail.

B. A retailer's gross receipts from the sale of postage stamps are included in the tax base under the retail classification if the stamps are sold for any purpose other than transporting mail.

C. The Department shall presume that a postage stamp is sold for a purpose other than transporting mail if the postage stamp is sold for at least 50% more than its face value. A retailer may overcome the presumption; however, the burden of proof will remain on the retailer.

D. A retailer's gross receipts from the sale of cancelled postage stamps are included in the tax base under the retail classification.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 4112, effective October 4, 2000 (Supp. 00-4).

R15-5-170. Interstate and Foreign Transactions

A. Gross receipts from sales of tangible personal property made in interstate or foreign commerce are deductible from the tax base if all of the following apply:

1. The order is received from a location outside of Arizona; and
2. The retailer ships or delivers the tangible personal property to a location outside of Arizona for use outside of Arizona.

B. In meeting the above requirements, if delivery is made by the retailer to a common carrier for transportation to a location outside Arizona, the common carrier is deemed to be the agent of the retailer for purposes of this rule regardless of who is responsible for payment of the freight charges.

C. Suitable records shall be kept to substantiate the deduction for a sale made in interstate commerce. As such, records shall identify the tangible personal property sold and the delivery destination. The following records may be sufficient to substantiate the exemption:
1. Suitable records for substantiating the receipt of an order from out-of-state may include purchase orders, letters, or written memoranda on the receipt of orders placed by telephone.
2. Suitable records for substantiating out-of-state shipments include:
a. Internal delivery orders supported by receipts of expenses incurred in delivering the property and signed on the delivery date by the person who delivers the property;
b. Common carrier's receipt or bill of lading;
c. Parcel post receipt;
d. Export declaration;
e. Receipt from a licensed broker; or
f. Proof of export or import signed by a customs officer.

Historical Note

Renumbered from R15-5-1814 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-171. Sales to a Common Carrier

Gross receipts from sales made to a common carrier, engaged in interstate business, for delivery by the common carrier to a location outside of Arizona and for use outside of Arizona shall not be taxable if the order is received from a location outside of Arizona and the Arizona retailer prepays the freight charge.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-172. Sales by Florists

A. Gross receipts from sales made by florists are taxable. Delivery and relay or transmittal charges, when separately stated, are deductible from the tax base.

B. Orders received by an Arizona florist from an out-of-state customer for delivery within Arizona are taxable. Orders received by an Arizona florist by an out-of-state customer for delivery out-of-state are not taxable.

C. When the florist conducts transactions through a delivery association, the following shall apply:
1. Gross receipts from sales made by an Arizona florist, where the order is subsequently transmitted to another florist for filling and delivery, whether inside or outside of Arizona, are taxable.
2. Gross receipts from sales by Arizona florists who deliver from a transmitted order of another florist, whether the ordering florist is inside or outside of Arizona, are not taxable.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-173. Sales of Property Subsequently Taken Out-of- state

Gross receipts from sales of tangible personal property by Arizona vendors made to purchasers who subsequently take the property out-of-state do not qualify as exempt unless otherwise specifically exempted by statute.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-174. Sales to Non-U.S. Citizens

Gross receipts from sales to non-U.S. citizens are subject to the tax unless otherwise exempt.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

R15-5-180. Sales by Businesses in Federal Areas

Gross receipts from sales by businesses not operated by or as an agency of the Federal Government, located on military bases or other federal areas, are subject to tax.

Historical Note

Renumbered from R15-5-1825 and amended effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 682, effective April 7, 2007 (Supp. 07-1).

R15-5-181. Governmental Organizations

A. Gross receipts from the sale of tangible personal property to the state or its political subdivisions are taxable unless otherwise exempt. Gross receipts from the sale of tangible personal property to the Federal Government or its departments and agencies are taxable at the rate prescribed by statute, unless otherwise exempt.

B. Gross receipts from the sale of tangible personal property by the state or its political subdivisions, when acting in a proprietary capacity, are taxable unless otherwise exempt.

C. Gross receipts from the sale of tangible personal property by the Federal Government are not taxable.

Historical Note

Renumbered from R15-5-1803 and amended effective August 9, 1993 (Supp. 93-3).

R15-5-182. Nonprofit Organizations

A. Gross receipts from the sale of tangible personal property to nonprofit churches, schools, and other nonprofit organizations are subject to tax unless otherwise exempt.

B. Gross receipts from the sale of tangible personal property by a charitable nonprofit organization, recognized as such for income tax purposes by the Internal Revenue Service, are not subject to tax.

C. For purposes of the statutory exemption and this rule, the Internal Revenue Service recognition of a charitable nonprofit organization is defined in Internal Revenue Code § 501(c)(3).

Historical Note

Renumbered from R15-5-1804 and amended effective August 9, 1993 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 682, effective April 7, 2007 (Supp. 07-1).

R15-5-183. Exempt Sales to Health Organizations

A. Gross receipts from the sale of tangible personal property to qualifying hospitals, qualifying health care organizations, rehabilitation programs for mentally or physically handicapped persons, and qualifying community health centers are exempt from tax if such purchases are exempt from tax pursuant to statutory provisions.

B. The Department may, upon review of the written request and any other information requested by the Department to make a proper determination, provide an Exemption Letter to organization meeting the statutory criteria. The Exemption Letter shall be valid for a period of 12 months from the first day of the month following the issue date of the Exemption Letter unless the organization's tax exempt status changes prior to the end of the 12-month period, or the organization misrepresented or omitted material information in its exemption request.

C. Qualifying hospitals, qualifying health care organizations, rehabilitation programs for mentally or physically handicapped persons, and qualifying community health centers shall annually submit to the Department a written request for an Exemption Letter. The request shall be submitted at least 30 days prior to the first day of the exemption period. For purposes of this rule, "exemption period" means the 12-month period beginning on the first day of the month following the issue date of the Exemption Letter or the 12-month period requested by the organization.

1. Qualifying hospitals shall attach to their annual exemption request a copy of their current license issued by the Department of Health Services.
2. Qualifying health care organizations shall attach to their exemption request letter the statutorily required annual financial audit and a copy of their Internal Revenue Code 501(c) recognition unless the Department has previously received a copy of this recognition.
3. Rehabilitation programs for mentally or physically handicapped persons shall attach to their exemption request a copy of their Internal Revenue Code 501(c)(3) recognition unless the Department has previously received a copy of this recognition.
4. Qualifying community health centers shall attach to their exemption request documentation supporting the statutory criteria and a copy of their Internal Revenue Code 501(c)(3) recognition unless the Department has previously received a copy of this recognition.

Historical Note

Renumbered from R15-5-1821 and amended effective August 9, 1993 (Supp. 93-3). Amended effective April 21, 1995 (Supp. 95-2).

ARTICLE 4. AMUSEMENT CLASSIFICATION

Section

R15-5-403. Amusement Devices

R15-5-404. Other Income
R15-5-406. Health or Fitness Establishments and Private Recreational Establishments

R15-5-403. Amusement Devices

Gross proceeds of sales or gross income from the operation of coin-operated and other devices that provide amusement are included in the tax base under the amusement classification. Examples include: devices that play prerecorded music, electronic games, pinball games, and billiard tables.

1. The tax base from the business of operating amusement devices is the gross amount received from the amusement devices without deduction for commissions paid, rental cost for the equipment, or other expenses.
2. The individual having direct control of the funds generated by the amusement devices shall pay the tax to the Department.

Historical Note

Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 13 A.A.R. 682, effective April 7, 2007 (Supp. 07-1).

R15-5-404. Other Income

Gross receipts from the sale of programs, souvenirs, or any other items of tangible personal property are included in the tax base under the retail classification.

Historical Note

Amended effective April 21, 1995 (Supp. 95-2). Amended effective September 22, 1997 (Supp. 97-3).

R15-5-406. Health or Fitness Establishments and Private Recreational Establishments

A. The operator of a "health or fitness establishment" or a "private recreational establishment," as defined in A.R.S. § 42-5073(C), shall exclude from the tax base under the amusement classification all gross proceeds of sales or gross income from membership fees and initiation fees charged for the use of the establishment, or any portion of the establishment, for 28 days or more, and fees charged for the use of the establishment by bona fide accompanied guests of members. Any other fees for the use of a health or fitness establishment or a private recreational establishment, or any portion of the establishment, are included in the tax base of the amusement classification.

B. Gross proceeds of sales or gross income derived from other businesses that are located on the premises of a health, fitness, or recreational business shall not be considered when determining whether a health, fitness, or recreational business is a "health or fitness establishment" or a "private recreational establishment" if the other businesses are separate and independent from the health, fitness, or recreational business. Whether the other businesses are separate and independent depends upon the facts in each case. The Department considers several factors in making this determination including but not limited to the following:

1. Whether the business is open to both members and nonmembers;
2. Whether the primary purpose of the business is closely related to the primary purpose of the health, fitness, or recreational business;
3. Whether the business could exist without the health, fitness, or recreational business; and
4. Whether the business shares assets or employees with the health, fitness, or recreational business.

Historical Note

Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 13 A.A.R. 682, effective April 7, 2007 (Supp. 07-1).

General and Specific Authorizing Statutes:

42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.

2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.

3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.

4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.

5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.

6. Provide such assistance to the governor and the legislature as they may require.

7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

42-5001. Definitions

In this article and article 2 of this chapter, unless the context otherwise requires:

1. "Business" includes all activities or acts, personal or corporate, engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly, but does not include either:

(a) Casual activities or sales.

(b) The transfer of electricity from a solar photovoltaic generation system to an electric utility distribution system.

2. "Distribution base" means the portion of the revenues derived from the tax levied by this article and articles 5 and 8 of this chapter designated for distribution to counties, municipalities and other purposes according to section 42-5029, subsection D.

3. "Engaging", when used with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers.

4. "Gross income" means the gross receipts of a taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property or service, or both, and without any deduction on account of losses.

5. "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property without any deduction on account of the cost of property sold, expense of any kind or losses, but cash discounts allowed and taken on sales are not included as gross income.

6. "Gross income" and "gross proceeds of sales" do not include goods, wares or merchandise, or value thereof, returned by customers if the sale price is refunded either in cash or by credit, nor the value of merchandise traded in on the purchase of new merchandise when the trade-in allowance is deducted from the sales price of the new merchandise before completion of the sale.

7. "Gross receipts" means the total amount of the sale, lease or rental price, as the case may be, of the retail sales of retailers, including any services that are a part of the sales, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property of every kind or nature, and any amount for which credit is allowed by the seller to the purchaser without any deduction from the amount on account of the cost of the property sold, materials used, labor or service performed, interest paid, losses or any other expense. Gross receipts do not include cash discounts allowed and taken nor the sale price of property returned by customers if the full sale price is refunded either in cash or by credit.

8. "Person" or "company" includes an individual, firm, partnership, joint venture, association, corporation, estate or trust, this state, any county, city, town, district, other than a school district, or other political subdivision and any other group or combination acting as a unit, and the plural as well as the singular number.

9. "Qualifying community health center":

(a) Means an entity that is recognized as nonprofit under section 501(c)(3) of the United States internal revenue code, that is a community-based, primary care clinic that has a community-based board of directors and that is either:

(i) The sole provider of primary care in the community.

(ii) A nonhospital affiliated clinic that is located in a federally designated medically underserved area in this state.

(b) Includes clinics that are being constructed as qualifying community health centers.

10. "Qualifying health care organization" means an entity that is recognized as nonprofit under section 501(c) of the United States internal revenue code and that uses, saves or invests at least eighty per cent of all monies that it receives from all sources each year only for health and medical related educational and charitable services, as documented by annual financial audits prepared by an independent certified public accountant, performed according to generally accepted auditing standards and filed annually with the department. Monies that are used, saved or invested to lease, purchase or construct a facility for health and medical related education and charitable services are included in the eighty per cent requirement.

11. "Qualifying health sciences educational institution" means an entity that is recognized as nonprofit under section 501(c) of the United States internal revenue code and that solely provides graduate and postgraduate education in the health sciences. For the purposes of this paragraph, "health sciences" includes medicine, nursing, physician's assistant studies, pharmacy, physical therapy, occupational therapy, biomedical sciences, podiatry, clinical psychology, cardiovascular science, nurse anesthesia, dentistry, optometry and veterinary medicine.

12. "Qualifying hospital" means any of the following:

(a) A licensed hospital which is organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.

(c) A hospital, nursing care institution or residential care institution which is operated by the federal government, this state or a political subdivision of this state.

(d) A facility that is under construction and that on completion will be a facility under subdivision (a), (b) or (c) of this paragraph.

13. "Retailer" includes every person engaged in the business classified under the retail classification pursuant to section 42-5061 and, when in the opinion of the department it is necessary for the efficient administration of this article, includes dealers, distributors, supervisors, employers and salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, whether in making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers.

14. "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever, including consignment transactions and auctions, of tangible personal property or other activities taxable under this chapter, for a consideration, and includes:

(a) Any transaction by which the possession of property is transferred but the seller retains the title as security for the payment of the price.

(b) Fabricating tangible personal property for consumers who furnish either directly or indirectly the materials used in the fabrication work.

(c) Furnishing, preparing or serving for a consideration any tangible personal property consumed on the premises of the person furnishing, preparing or serving the tangible personal property.

15. "Solar daylighting" means a device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

16. "Solar energy device" means a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, including wind generator systems that produce electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a trombe wall, and not merely as a part of a normal structure, such as a window.

17. "Tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses.

18. "Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year, if permission is obtained from the department to use a fiscal year as the tax period instead of the calendar year.

19. "Taxpayer" means any person who is liable for any tax which is imposed by this article.

20. "Wholesaler" or "jobber" means any person who sells tangible personal property for resale and not for consumption by the purchaser.

42-5061. Retail classification; definitions

A. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. The tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from:

1. Professional or personal service occupations or businesses that involve sales or transfers of tangible personal property only as inconsequential elements.

2. Services rendered in addition to selling tangible personal property at retail.

3. Sales of warranty or service contracts. The storage, use or consumption of tangible personal property provided under the conditions of such contracts is subject to tax under section 42-5156.

4. Sales of tangible personal property by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

5. Sales to persons engaged in business classified under the restaurant classification of articles used by human beings for food, drink or condiment, whether simple, mixed or compounded.

6. Business activity that is properly included in any other business classification that is taxable under this article.

7. The sale of stocks and bonds.

8. Drugs and medical oxygen, including delivery hose, mask or tent, regulator and tank, on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances.

9. Prosthetic appliances as defined in section 23-501 prescribed or recommended by a health professional who is licensed pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 16, 17 or 29.

10. Insulin, insulin syringes and glucose test strips.

11. Prescription eyeglasses or contact lenses.

12. Hearing aids as defined in section 36-1901.

13. Durable medical equipment that has a centers for medicare and medicaid services common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

14. Sales of motor vehicles to nonresidents of this state for use outside this state if the motor vehicle dealer ships or delivers the motor vehicle to a destination out of this state.

15. Food, as provided in and subject to the conditions of article 3 of this chapter and section 42-5074.

16. Items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code section 1786).

17. Textbooks by any bookstore that are required by any state university or community college.

18. Food and drink to a person that is engaged in a business that is classified under the restaurant classification and that provides such food and drink without monetary charge to its employees for their own consumption on the premises during the employees' hours of employment.

19. Articles of food, drink or condiment and accessory tangible personal property to a school district or charter school if such articles and accessory tangible personal property are to be prepared and served to persons for consumption on the premises of a public school within the district or on the premises of the charter school during school hours.

20. Lottery tickets or shares pursuant to title 5, chapter 5.1, article 1.

21. The sale of cash equivalents and the sale of precious metal bullion and monetized bullion to the ultimate consumer, but the sale of coins or other forms of money for manufacture into jewelry or works of art is subject to the tax and the gross proceeds of sales or gross income derived from the redemption of any cash equivalent by the holder as a means of payment for goods or services that are taxable under this article is subject to the tax. For the purposes of this paragraph:

(a) "Cash equivalents" means items or intangibles, whether or not negotiable, that are sold to one or more persons, through which a value denominated in money is purchased in advance and may be redeemed in full or in part for tangible personal property, intangibles or services. Cash equivalents include gift cards, stored value cards, gift

certificates, vouchers, traveler's checks, money orders or other instruments, orders or electronic mechanisms, such as an electronic code, personal identification number or digital payment mechanism, or any other prepaid intangible right to acquire tangible personal property, intangibles or services in the future, whether from the seller of the cash equivalent or from another person. Cash equivalents do not include either of the following:

(i) Items or intangibles that are sold to one or more persons, through which a value is not denominated in money.

(ii) Prepaid calling cards or prepaid authorization numbers for telecommunications services made taxable by subsection P of this section.

(b) "Monetized bullion" means coins and other forms of money that are manufactured from gold, silver or other metals and that have been or are used as a medium of exchange in this or another state, the United States or a foreign nation.

(c) "Precious metal bullion" means precious metal, including gold, silver, platinum, rhodium and palladium, that has been smelted or refined so that its value depends on its contents and not on its form.

22. Motor vehicle fuel and use fuel that are subject to a tax imposed under title 28, chapter 16, article 1, sales of use fuel to a holder of a valid single trip use fuel tax permit issued under section 28-5739, sales of aviation fuel that are subject to the tax imposed under section 28-8344 and sales of jet fuel that are subject to the tax imposed under article 8 of this chapter.

23. Tangible personal property sold to a person engaged in the business of leasing or renting such property under the personal property rental classification if such property is to be leased or rented by such person.

24. Tangible personal property sold in interstate or foreign commerce if prohibited from being so taxed by the constitution of the United States or the constitution of this state.

25. Tangible personal property sold to:

(a) A qualifying hospital as defined in section 42-5001.

(b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

(c) A qualifying health care organization as defined in section 42-5001 if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind and visually impaired children and children with multiple disabilities from the time of birth to age twenty-one.

(d) A qualifying community health center as defined in section 42-5001.

(e) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

(f) For taxable periods beginning from and after June 30, 2001, a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that provides residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy, if the tangible personal property is used by the organization solely to provide residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy.

(g) A qualifying health sciences educational institution as defined in section 42-5001.

(h) Any person representing or working on behalf of another person described in subdivisions (a) through (g) of this paragraph if the tangible personal property is incorporated or fabricated into a project described in section 42-5075, subsection O.

26. Magazines or other periodicals or other publications by this state to encourage tourist travel.

27. Tangible personal property sold to:

(a) A person that is subject to tax under this article by reason of being engaged in business classified under section 42-5075 or to a subcontractor working under the control of a person engaged in business classified under section 42-5075, if the property so sold is any of the following:

(i) Incorporated or fabricated by the person into any real property, structure, project, development or improvement as part of the business.

(ii) Incorporated or fabricated by the person into any project described in section 42-5075, subsection O.

(iii) Used in environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

(b) A person that is not subject to tax under section 42-5075 and that has been provided a copy of a certificate under section 42-5009, subsection L, if the property so sold is incorporated or fabricated by the person into the real property, structure, project, development or improvement described in the certificate.

28. The sale of a motor vehicle to:

(a) A nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by article 1 of this chapter and if the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01.

(b) An enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe.

29. Tangible personal property purchased in this state by a nonprofit charitable organization that has qualified under section 501(c)(3) of the United States internal revenue code and that engages in and uses such property exclusively in programs for persons with mental or physical disabilities if the programs are exclusively for training, job placement, rehabilitation or testing.

30. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

31. Sales of commodities, as defined by title 7 United States Code section 2, that are consigned for resale in a warehouse in this state in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the United States commodity futures trading commission.

32. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

33. Sales of seeds, seedlings, roots, bulbs, cuttings and other propagative material to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state.

34. Machinery, equipment, technology or related supplies that are only useful to assist a person with a physical disability as defined in section 46-191 or a person who has a developmental disability as defined in section 36-551 or has a head injury as defined in section 41-3201 to be more independent and functional.

35. Sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

36. Paper machine clothing, such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing.

37. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity sold to a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

38. Sales of liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development and, beginning on January 1, 1999, printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involves direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This paragraph does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any deduction for such chemicals that is otherwise provided by this section. For the purposes of this paragraph, "printing" means a commercial printing operation and includes job printing, engraving, embossing, copying and bookbinding.

39. Through December 31, 1994, personal property liquidation transactions, conducted by a personal property liquidator. From and after December 31, 1994, personal property liquidation transactions shall be taxable under this section provided that nothing in this subsection shall be construed to authorize the taxation of casual activities or transactions under this chapter. For the purposes of this paragraph:

(a) "Personal property liquidation transaction" means a sale of personal property made by a personal property liquidator acting solely on behalf of the owner of the personal property sold at the dwelling of the owner or on the death of any owner, on behalf of the surviving spouse, if any, any devisee or heir or the personal representative of the estate of the deceased, if one has been appointed.

(b) "Personal property liquidator" means a person who is retained to conduct a sale in a personal property liquidation transaction.

40. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

41. A motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle sold to a motor carrier who is subject to a fee prescribed in title 28, chapter 16, article 4 and who is engaged in the business of leasing or renting such property.

42. Livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons who are engaged in producing livestock, poultry, or livestock or poultry products or who are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, "poultry" includes ratites.

43. Sales of implants used as growth promotants and injectable medicines, not already exempt under paragraph 8 of this subsection, for livestock or poultry owned by or in possession of persons who are engaged in producing livestock, poultry, or livestock or poultry products or who are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, "poultry" includes ratites.

44. Sales of motor vehicles at auction to nonresidents of this state for use outside this state if the vehicles are shipped or delivered out of this state, regardless of where title to the motor vehicles passes or its free on board point.

45. Tangible personal property sold to a person engaged in business and subject to tax under the transient lodging classification if the tangible personal property is a personal hygiene item or articles used by human beings for food, drink or condiment, except alcoholic beverages, that are furnished without additional charge to and intended to be consumed by the transient during the transient's occupancy.

46. Sales of alternative fuel, as defined in section 1-215, to a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

47. Sales of materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:

(a) Printed or photographic materials, beginning August 7, 1985.

(b) Electronic or digital media materials, beginning July 17, 1994.

48. Tangible personal property sold to a commercial airline and consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this paragraph, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

49. Sales of alternative fuel vehicles if the vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in section 1-215.

50. Sales of any spirituous, vinous or malt liquor by a person that is licensed in this state as a wholesaler by the department of liquor licenses and control pursuant to title 4, chapter 2, article 1.

51. Sales of tangible personal property to be incorporated or installed as part of environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

52. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

53. Application services that are designed to assess or test student learning or to promote curriculum design or enhancement purchased by or for any school district, charter school, community college or state university. For the purposes of this paragraph:

(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol.

(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.

54. Sales of motor vehicle fuel and use fuel to a qualified business under section 41-1516 for off-road use in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

55. Sales of repair parts installed in equipment used directly by a qualified business under section 41-1516 in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

56. Sales or other transfers of renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the corporation commission or governing body of a public power utility to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.

57. Computer data center equipment purchased by the owner, operator or qualified colocation tenant of the computer data center or an authorized agent of the owner, operator or qualified colocation tenant during the qualification period for use in a computer data center that is certified by the Arizona commerce authority under section 41-1519. To qualify for this deduction, at the time of purchase, the owner, operator or qualified colocation tenant must present to the retailer its certificate that is issued pursuant to section 41-1519 and that establishes its qualification for the deduction. For the purposes of this paragraph, "computer data center", "computer data center

equipment", "qualification period" and "qualified colocation tenant" have the same meanings prescribed in section 41-1519.

58. Orthodontic devices dispensed by a dental professional who is licensed under title 32, chapter 11 to a patient as part of the practice of dentistry.

59. Sales of tangible personal property incorporated or fabricated into a project described in section 42-5075, subsection O, that is located within the exterior boundaries of an Indian reservation for which the owner, as defined in section 42-5075, of the project is an Indian tribe or an affiliated Indian. For the purposes of this paragraph:

(a) "Affiliated Indian" means an individual native American Indian who is duly registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was established.

(b) "Indian reservation" means all lands that are within the limits of areas set aside by the United States for the exclusive use and occupancy of an Indian tribe by treaty, law or executive order and that are recognized as Indian reservations by the United States department of the interior.

(c) "Indian tribe" means any organized nation, tribe, band or community that is recognized as an Indian tribe by the United States department of the interior and includes any entity formed under the laws of the Indian tribe.

B. In addition to the deductions from the tax base prescribed by subsection A of this section, the gross proceeds of sales or gross income derived from sales of the following categories of tangible personal property shall be deducted from the tax base:

1. Machinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining" and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.

3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification, including a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection O, and consisting of central office switching equipment, switchboards, private branch exchange equipment,

microwave radio equipment and carrier equipment including optical fiber, coaxial cable and other transmission media that are components of carrier systems.

4. Machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

5. Neat animals, horses, asses, sheep, ratites, swine or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in such animals used for breeding or production.

6. Pipes or valves four inches in diameter or larger used to transport oil, natural gas, artificial gas, water or coal slurry, including compressor units, regulators, machinery and equipment, fittings, seals and any other part that is used in operating the pipes or valves.

7. Aircraft, navigational and communication instruments and other accessories and related equipment sold to:

(a) A person holding a federal certificate of public convenience and necessity, a supplemental air carrier certificate under federal aviation regulations (14 Code of Federal Regulations part 121) or a foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(b) Any foreign government.

(c) Persons who are not residents of this state and who will not use such property in this state other than in removing such property from this state. This subdivision also applies to corporations that are not incorporated in this state, regardless of maintaining a place of business in this state, if the principal corporate office is located outside this state and the property will not be used in this state other than in removing the property from this state.

8. Machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.

9. Railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

10. Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

11. Buses or other urban mass transit vehicles that are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and that are sold to bus companies holding a federal certificate of

convenience and necessity or operated by any city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

12. Groundwater measuring devices required under section 45-604.

13. New machinery and equipment consisting of tractors, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk, and machinery and equipment necessary for cooling milk and livestock, and drip irrigation lines not already exempt under paragraph 6 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural and floricultural crops and products in this state. For the purposes of this paragraph:

(a) "New machinery and equipment" means machinery and equipment that have never been sold at retail except pursuant to leases or rentals that do not total two years or more.

(b) "Self-powered implements" includes machinery and equipment that are electric-powered.

14. Machinery or equipment used in research and development. For the purposes of this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

15. Tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

(a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations part 25.

(b) Any satellite television or data transmission facility, if both of the following conditions are met:

(i) Over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations part 25.

(ii) Over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

For the purposes of subdivision (b) of this paragraph, "test period" means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

16. Clean rooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph 14 of this subsection, of semiconductor products. For the purposes of this paragraph, "clean room" means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Clean room:

(a) Includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the clean room environment.

(b) Does not include the building or other permanent, nonremovable component of the building that houses the clean room environment.

17. Machinery and equipment used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.

18. Machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development and that is used directly to meet or exceed rules or regulations adopted by the federal energy regulatory commission, the United States environmental protection agency, the United States nuclear regulatory commission, the Arizona department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.

19. Machinery and equipment that are sold to a person engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state, including a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection O, if the machinery and equipment are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

20. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:

(a) Repair or replacement parts purchased for the machinery or equipment described in this paragraph.

(b) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.

(c) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

21. Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2024 by a qualified business under section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in section 41-1516. To qualify for this deduction, the qualified business at the time of purchase must present its certification approved by the department.

C. The deductions provided by subsection B of this section do not include sales of:

1. Expendable materials. For the purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsection B of this section regardless of the cost or useful life of that property.

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

4. Tangible personal property used in selling or distributing activities, other than the telecommunications transmissions described in subsection B, paragraph 15 of this section.

5. Motor vehicles required to be licensed by this state, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection B, paragraph 11 of this section, without regard to the use of such motor vehicles.

6. Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.

7. Motors and pumps used in drip irrigation systems.

8. Machinery and equipment or other tangible personal property used by a contractor in the performance of a contract.

D. In addition to the deductions from the tax base prescribed by subsection A of this section, there shall be deducted from the tax base the gross proceeds of sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in section 41-1514.02. This subsection applies for ten full consecutive calendar or fiscal years after the start of initial construction.

E. In computing the tax base, gross proceeds of sales or gross income from retail sales of heavy trucks and trailers does not include any amount attributable to federal excise taxes imposed by 26 United States Code section 4051.

F. If a person is engaged in an occupation or business to which subsection A of this section applies, the person's books shall be kept so as to show separately the gross proceeds of sales of tangible personal property and the gross income from sales of services, and if not so kept the tax shall be imposed on the total of the person's gross proceeds of sales of tangible personal property and gross income from services.

G. If a person is engaged in the business of selling tangible personal property at both wholesale and retail, the tax under this section applies only to the gross proceeds of the sales made other than at wholesale if the person's books are kept so as to show separately the gross proceeds of sales of each class, and if the books are not so kept, the tax under this section applies to the gross proceeds of every sale so made.

H. A person who engages in manufacturing, baling, crating, boxing, barreling, canning, bottling, sacking, preserving, processing or otherwise preparing for sale or commercial use any livestock, agricultural or horticultural product or any other product, article, substance or commodity and who sells the product of such business at retail in this state is deemed, as to such sales, to be engaged in business classified under the retail classification. This subsection does not apply to businesses classified under the:

1. Transporting classification.

2. Utilities classification.

3. Telecommunications classification.

4. Pipeline classification.

5. Private car line classification.

6. Publication classification.

7. Job printing classification.

8. Prime contracting classification.

9. Restaurant classification.

I. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base for the retail classification:

1. Sales made directly to the United States government or its departments or agencies by a manufacturer, modifier, assembler or repairer.

2. Sales made directly to a manufacturer, modifier, assembler or repairer if such sales are of any ingredient or component part of products sold directly to the United States government or its departments or agencies by the manufacturer, modifier, assembler or repairer.

3. Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract.

4. Sales of overhead materials or other tangible personal property to a manufacturer, modifier, assembler or repairer if the gross proceeds of sales or gross income derived from the property by the manufacturer, modifier, assembler or repairer will be exempt under paragraph 3 of this subsection.

J. There shall be deducted from the tax base fifty percent of the gross proceeds or gross income from any sale of tangible personal property made directly to the United States government or its departments or agencies that is not deducted under subsection I of this section.

K. The department shall require every person claiming a deduction provided by subsection I or J of this section to file on forms prescribed by the department at such times as the department directs a sworn statement disclosing the name of the purchaser and the exact amount of sales on which the exclusion or deduction is claimed.

L. In computing the tax base, gross proceeds of sales or gross income does not include:

1. A manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.

2. The waste tire disposal fee imposed pursuant to section 44-1302.

M. There shall be deducted from the tax base the amount received from sales of solar energy devices. The retailer shall register with the department as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

N. In computing the tax base in the case of the sale or transfer of wireless telecommunications equipment as an inducement to a customer to enter into or continue a contract for telecommunications services that are taxable under section 42-5064, gross proceeds of sales or gross income does not include any sales commissions or other compensation received by the retailer as a result of the customer entering into or continuing a contract for the telecommunications services.

O. For the purposes of this section, a sale of wireless telecommunications equipment to a person who holds the equipment for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunications services that are taxable under section 42-5064 is considered to be a sale for resale in the regular course of business.

P. Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this section.

Q. For the purposes of this section, the diversion of gas from a pipeline by a person engaged in the business of:

1. Operating a natural or artificial gas pipeline, for the sole purpose of fueling compressor equipment to pressurize the pipeline, is not a sale of the gas to the operator of the pipeline.

2. Converting natural gas into liquefied natural gas, for the sole purpose of fueling compressor equipment used in the conversion process, is not a sale of gas to the operator of the compressor equipment.

R. For the purposes of this section, the transfer of title or possession of coal from an owner or operator of a power plant to a person in the business of refining coal is not a sale of coal if both of the following apply:

1. The transfer of title or possession of the coal is for the purpose of refining the coal.

2. The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this paragraph, "coal refining process" means the application of a coal additive system that aids in the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

S. If a seller is entitled to a deduction pursuant to subsection B, paragraph 15, subdivision (b) of this section, the department may require the purchaser to establish that the

requirements of subsection B, paragraph 15, subdivision (b) of this section have been satisfied. If the purchaser cannot establish that the requirements of subsection B, paragraph 15, subdivision (b) of this section have been satisfied, the purchaser is liable in an amount equal to any tax, penalty and interest which the seller would have been required to pay under article 1 of this chapter if the seller had not made a deduction pursuant to subsection B, paragraph 15, subdivision (b) of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter and related to the tangible personal property purchased. The amount shall be treated as transaction privilege tax to the purchaser and as tax revenues collected from the seller to designate the distribution base pursuant to section 42-5029.

T. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the retail classification from businesses selling tangible personal property at retail:

1. On the premises of a multipurpose facility that is owned, leased or operated by the tourism and sports authority pursuant to title 5, chapter 8.

2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

U. In computing the tax base for the sale of a motor vehicle to a nonresident of this state, if the purchaser's state of residence allows a corresponding use tax exemption to the tax imposed by article 1 of this chapter and the rate of the tax in the purchaser's state of residence is lower than the rate prescribed in article 1 of this chapter or if the purchaser's state of residence does not impose an excise tax, and the nonresident has secured a special ninety day nonresident registration permit for the vehicle as prescribed by sections 28-2154 and 28-2154.01, there shall be deducted from the tax base a portion of the gross proceeds or gross income from the sale so that the amount of transaction privilege tax that is paid in this state is equal to the excise tax that is imposed by the purchaser's state of residence on the nonexempt sale or use of the motor vehicle.

V. For the purposes of this section:

1. "Aircraft" includes:

(a) An airplane flight simulator that is approved by the federal aviation administration for use as a phase II or higher flight simulator under appendix H, 14 Code of Federal Regulations part 121.

(b) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.

2. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

3. "Selling at retail" means a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property, but transfer of possession, lease and rental as used in the definition of sale mean only such transactions as are found on investigation to be in lieu of sales as defined without the words lease or rental.

W. For the purposes of subsection I of this section:

1. "Assembler" means a person who unites or combines products, wares or articles of manufacture so as to produce a change in form or substance without changing or altering the component parts.

2. "Manufacturer" means a person who is principally engaged in the fabrication, production or manufacture of products, wares or articles for use from raw or prepared materials, imparting to those materials new forms, qualities, properties and combinations.

3. "Modifier" means a person who reworks, changes or adds to products, wares or articles of manufacture.

4. "Overhead materials" means tangible personal property, the gross proceeds of sales or gross income derived from that would otherwise be included in the retail classification, and that are used or consumed in the performance of a contract, the cost of which is charged to an overhead expense account and allocated to various contracts based on generally accepted accounting principles and consistent with government contract accounting standards.

5. "Repairer" means a person who restores or renews products, wares or articles of manufacture.

6. "Subcontract" means an agreement between a contractor and any person who is not an employee of the contractor for furnishing of supplies or services that, in whole or in part, are necessary to the performance of one or more government contracts, or under which any portion of the contractor's obligation under one or more government contracts is performed, undertaken or assumed and that includes provisions causing title to overhead materials or other tangible personal property used in the performance of the subcontract to pass to the government or that includes provisions incorporating such title passing clauses in a government contract into the subcontract.

42-5073. Amusement classification

A. The amusement classification is comprised of the business of operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, public dances, dance halls, boxing and wrestling matches, skating rinks, tennis courts, except as provided in subsection B of this section, video games, pinball machines, sports events or any other business charging admission or user fees for exhibition, amusement or entertainment, including the operation or sponsorship of events by a tourism and sports authority under title 5, chapter 8. For the purposes of this section, admission or user fees include, but are not limited to, any revenues derived from any form of contractual agreement for rights to or use of premium or special seating facilities or arrangements. The amusement classification does not include:

1. Activities or projects of bona fide religious or educational institutions.

2. Private or group instructional activities. For the purposes of this paragraph, "private or group instructional activities" includes, but is not limited to, performing arts, martial arts, gymnastics and aerobic instruction.

3. The operation or sponsorship of events by the Arizona exposition and state fair board or county fair commissions.

4. A musical, dramatic or dance group or a botanical garden, museum or zoo that is qualified as a nonprofit charitable organization under section 501(c)(3) of the United States internal revenue code and if no part of its net income inures to the benefit of any private shareholder or individual.

5. Exhibition events in this state sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with major league baseball teams or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

6. Operating or sponsoring rodeos that feature primarily farm and ranch animals in this state and that are sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

7. Sales of admissions to intercollegiate football contests if the contests are both:

(a) Operated by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the internal revenue code and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

(b) Not held in a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8.

8. Activities and events of, or fees and assessments received by, a homeowners organization from persons who are members of the organization or accompanied guests of members. For the purposes of this paragraph, "homeowners organization" means a mandatory membership organization comprised of owners of residential property within a specified residential real estate subdivision development or similar area and established to own property for the benefit of its members where both of the following apply:

(a) No part of the organization's net earnings inures to the benefit of any private shareholder or individual.

(b) The primary purpose of the organization is to provide for the acquisition, construction, management, maintenance or care of organization property.

9. Activities and events of, or fees received by, a nonprofit organization that is exempt from taxation under section 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

10. Arranging an amusement activity as a service to a person's customers if that person is not otherwise engaged in the business of operating or conducting an amusement personally or through others. This exception does not apply to businesses that operate or conduct amusements pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the amusement is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting amusement charges from a person's customers on behalf of the persons providing the amusement.

B. The tax base for the amusement classification is the gross proceeds of sales or gross income derived from the business, except that the following shall be deducted from the tax base:

1. The gross proceeds of sales or gross income derived from memberships, including initiation fees, which provide for the right to use a health or fitness establishment or a private recreational establishment, or any portion of an establishment, including tennis and other racquet courts at that establishment, for participatory purposes for twenty-eight days or more and fees charged for use of the health or fitness establishment or private recreational establishment by bona fide accompanied guests of members, except that this paragraph does not include additional fees, other than initiation fees, charged by a health

or fitness establishment or a private recreational establishment for purposes other than memberships which provide for the right to use a health or fitness establishment or private recreational establishment, or any portion of an establishment, for participatory purposes for twenty-eight days or more and accompanied guest use fees.

2. Amounts that are exempt under section 5-111, subsection H.

3. The gross proceeds of sales or gross income derived from membership fees, including initiation fees, that provide for the right to use a transient lodging recreational establishment, including golf courses and tennis and other racquet courts at that establishment, for participatory purposes for twenty-eight days or more, except that this paragraph does not include additional fees, other than initiation fees, that are charged by a transient lodging recreational establishment for purposes other than memberships and that provide for the right to use a transient lodging recreational establishment or any portion of the establishment for participatory purposes for twenty-eight days or more.

4. The gross proceeds of sales or gross income derived from sales to persons engaged in the business of transient lodging classified under section 42-5070, if all of the following apply:

(a) The persons who are engaged in the transient lodging business sell the amusement to another person for consideration.

(b) The consideration received by the transient lodging business is equal to or greater than the amount to be deducted under this subsection.

(c) The transient lodging business has provided an exemption certificate to the person engaging in business under this section.

5. The gross proceeds of sales or gross income derived from:

(a) Business activity that is properly included in any other business classification under this article and that is taxable to the person engaged in that classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

(b) Business activity that is arranged by the person who is subject to tax under this section and that is not taxable to the person conducting the activity due to an exclusion, exemption or deduction under this section or section 42-5062, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

(c) Business activity that is arranged by a person who is subject to tax under this section and that is taxable to another person under this section who conducts the activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

C. For the purposes of subsection B of this section:

1. "Health or fitness establishment" means a facility whose primary purpose is to provide facilities, equipment, instruction or education to promote the health and fitness of its members and at least eighty per cent of the monthly gross revenue of the facility is received through accounts of memberships and accompanied guest use fees which provide for the right to use the facility, or any portion of the facility, under the terms of the membership agreement for participatory purposes for twenty-eight days or more.

2. "Private recreational establishment" means a facility whose primary purpose is to provide recreational facilities, such as tennis, golf and swimming, for its members and where at least eighty per cent of the monthly gross revenue of the facility is received through accounts of memberships and accompanied guest use fees which provide for the right to use the facility, or any portion of the facility, for participatory purposes for twenty-eight days or more.

3. "Transient lodging recreational establishment" means a facility whose primary purpose is to provide facilities for transient lodging, that is subject to taxation under this chapter and that also provides recreational facilities, such as tennis, golf and swimming, for members for a period of twenty-eight days or more.

D. Until December 31, 1988, the revenues from hayrides and other animal-drawn amusement rides, from horseback riding and riding instruction and from recreational tours using motor vehicles designed to operate on and off public highways are exempt from the tax imposed by this section. Beginning January 1, 1989, the gross proceeds or gross income from hayrides and other animal-drawn amusement rides, from horseback riding and from recreational tours using motor vehicles designed to operate on and off public highways are subject to taxation under this section. Tax liabilities, penalties and interest paid for taxable periods before January 1, 1989 shall not be refunded unless the taxpayer requesting the refund provides proof satisfactory to the department that the taxes will be returned to the customer.

E. If a person is engaged in the business of offering both exhibition, amusement or entertainment and private or group instructional activities, the person's books shall be kept to show separately the gross income from exhibition, amusement or entertainment and the gross income from instructional activities. If the books do not provide this separate accounting, the tax is imposed on the person's total gross income from the business.

F. The department shall separately account for revenues collected under the amusement classification for the purposes of section 42-5029, subsection D, paragraph 4, subdivision (b).

G. For purposes of section 42-5032.01, the department shall separately account for revenues collected under the amusement classification from sales of admissions to:

1. Events that are held in a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8, including intercollegiate football contests that are operated by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the internal revenue code.

2. Professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

F-5

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-16-0603)
Title 9, Chapter 30, Article 1, Definitions; Article 2, Eligibility; Article 3, Services; Article 4, Grievance System

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-5**

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

FROM: Chris Kleminich, Staff Attorney

DATE: May 20, 2016

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-16-0603)**
Title 9, Chapter 30, Article 1, Definitions; Article 2, Eligibility;
Article 3, Services; Article 4, Grievance System

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Health Care Cost Containment System (AHCCCS) is "to promote a comprehensive health care system to eligible citizens of this state." Laws 2013, 1st S.S., Ch. 10, § 53. This system is managed by the Director of the AHCCCS Administration (Administration), which is established under A.R.S. § 36-2902. The Director has the powers and duties prescribed in A.R.S. §§ 36-2903 and 2903.01.

This five-year review report covers 22 rules in A.A.C. Title 9, Chapter 30, related to the Medicare Part D Prescription Coverage Extra Help Subsidy Program. As of March 1, 2016, no individual has applied for this program through the AHCCCS Administration.

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

Article 1 contains one rule that addresses definitions, related to general definitions.

Article 2 contains eighteen rules that address eligibility, related to general provisions; opportunity to apply; how to file an application; assistance with an application; Social Security Numbers (SSN); residency; income; ineligible persons; resources; verification; Medicare requirements; eligibility determination; determination of extra help amount; notice of eligibility determination by AHCCCS; effective date of eligibility; discontinuance of eligibility or change in the extra help amount; redetermination; and reporting changes.

Article 3 contains one rule that addresses services, related to legal obligations.

Article 4 contains two rules that address grievance systems, related to state fair hearing requests; and state fair hearings for applicants or members.

Year that Each Rule was Last Amended or Newly Made

All of the rules were newly made on March 7, 2006.

Proposed Action

The Administration indicates that it intends to submit a rulemaking to the Council by June 30, 2016 to amend Sections 204, 205, 206, 207, 209, 210, 211, 212, 213, 215, 401 and 402.

Summary of Reasons for the Proposed Action

The Administration indicates that the rules can be made more clear, concise, and understandable.

Substantive or Procedural Concerns

None.

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

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

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

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

Yes. The Administration indicates that the rules effectively meet their objectives.

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

No. The Administration indicates that it has not received any written criticisms of the rules during the last five years.

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

Yes. The Administration cites to A.R.S. §§ 36-2903(O) and 36-2903.01(F) as general authority for the rules. Under A.R.S. § 36-2903.01(F), in relevant part, "[i]n addition to the rules otherwise specified in this article [Arizona Health Care Cost Containment System], the [Administration] may adopt necessary rules pursuant to [T]itle 41, [C]hapter 6 to carry out this article."

The Administration cites to A.R.S. § 36-2907(A)(4) as specific authority for the Administration to assist a person in obtaining medications through the Medicare Prescription Part D program.

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

Yes. The Administration indicates that the rules are consistent with state and federal rules and statutes.

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

Yes. The Administration indicates that the rules are enforced as written.

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

Yes. The Administration indicates that the rules are clear, concise, and understandable, with the following exceptions:

- Section 204: The Administration intends to repeal the rule, as subsection (A) may be moved to Section 203(C)(2), and subsection (B) is duplicative of Section 201(A).
- Section 205: The Administration intends to repeal this rule, and combine all eligibility requirements into one rule.
- Section 206: The Administration intends to repeal this rule, and combine all eligibility requirements into one rule.
- Section 207: A clarification is needed to count "in-kind support" and "maintenance" as part of the income calculation.
- Section 209: A clarification is needed to count the value of any life insurance policy as part of the resource calculation.
- Section 210: The Administration intends to repeal this rule, and combine all eligibility requirements into one rule.
- Section 211: The incorporation by reference date for 20 CFR 418.3010 should be updated with the latest publication date.
- Section 212: The Administration recommends adding a cross-reference to 42 CFR 435.911 describing timeframe requirements and exceptions.
- Section 213: Incorporation by reference dates should be updated with the latest publication dates.
- Section 215: The January 1, 2006 date referenced in the rule should be removed, as it is no longer necessary.
- Sections 401 and 402: The rules related to State Fair Hearings should be combined into the general requirements section.

8. Stringency of the Rules:

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

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

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

Not applicable.

9. For rules adopted after July 29, 2010:

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

No. The rules do not require issuance of a regulatory permit, license or agency authorization.

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

Not applicable.

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

Yes. Upon completion of the rulemaking that it intends to submit to the Council in June, the Administration will complete the course of action proposed in the 2011 report.

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

Yes. As described above, the Administration indicates that it intends to submit a rulemaking to the Council by June 30, 2016 to amend Sections 204, 205, 206, 207, 209, 210, 211, 212, 213, 215, 401 and 402.

Conclusion

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

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-5**

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

FROM: GRRC Economic Team

DATE: May 20, 2016

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-16-0603)**
Title 9, Chapter 30, Article 1, Definitions; Article 2, Eligibility;
Article 3, Services; Article 4, Grievance System

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

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

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking was available for the rules contained in the five-year-review report.

The rules reviewed by the Department in Articles 1, 2, 3, and 4 address the processes and procedures associated with determining the eligibility for Extra Help applicants when the individual applies through AHCCCS instead of Social Security. Specifically, Article 1 provides definitions, Article 2 clarifies eligibility, Article 3 shows administration's service requirements, and Article 4 establishes a grievance system.

The Department believes the economic impact has not been significantly different than the minimal amount predicted in the 2006 EIS. The economic impact has been even less than predicted, as no one has yet to apply for the Extra Help subsidy through AHCCCS. The rules in the Chapter have a minimal (less than $1,000 per year) or no economic impact.

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

The Department reports the rules impose the least burden and costs on persons regulated by these rules and have existed the last five years without comment. Even so, the Department does anticipate the need to amend the rules in June to shorten language and increase the rules' clarity and consistency with statute.

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

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

4. Conclusion

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

AHCCCS
Arizona Health Care Cost Containment System

Douglas A. Ducey, Governor
Thomas J. Betlach, Director

March 31, 2016

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

Dear Ms. Ong:

Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 30, Article 1 thru 4. The report includes all of the documentation required by R1-6-301 (C) and (D).

As required by A.R.S. § 41-1056, the Administration certifies that the agency is in compliance with A.R.S. § 41-1091.

If you have any questions or comments regarding this report, please contact Mariaelena Ugarte, Office of Administrative Legal Services at (602)-417-4693.

Sincerely,

Matthew Devlin
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 30, Article 1- 4

March 2016

I. General Information about 9 A.A.C. 30, Article 1-4

Overview

The AHCCCS Administration has developed rules in 9 A.A.C. 30, to describe how a person can apply for the Medicare Prescription Part D Extra Help program. These rules are used only in the event that a person does not apply through Social Security.

The Extra Help (or Low Income Subsidy) program provides assistance with Medicare Part D prescription costs for people with limited income and resources.

The Extra Help program provides:

- Help paying the Medicare drug plan's monthly premium through a premium subsidy. Depending on the beneficiary's income and resources, the beneficiary may pay a reduced premium or no premium for a basic plan. For an enhanced plan (a plan that may cover more drugs and generally has a higher monthly premium), the beneficiary must pay the difference between the premium and the Part D premium subsidy amount.
- Help paying any yearly deductible,
- Help paying coinsurance and co-payments for prescription drugs that are on the plan's formulary (list of covered drugs). In most cases, with Extra Help the beneficiary will pay only a small amount for each covered prescription. The beneficiary generally pays all costs for drugs that are not on the plan's formulary.
- No coverage gap (known as the Donut Hole).

Eligibility for the Extra Help program is determined by the Social Security Administration. However, a beneficiary can also automatically qualify for Extra Help and not have to file an application if the beneficiary meets one of the following conditions.

- The beneficiary has full Medicaid coverage,
- The beneficiary is eligible for Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SLMB), or Qualified Individual (QI)-1, or
- The beneficiary receives Supplemental Security Income (SSI) benefits.

The beneficiary must be enrolled with a Medicare drug plan to get this Extra Help. The exact amount the beneficiary pays depends on the level of Extra Help the beneficiary is eligible for.

As of March 1, 2016 there has not been anyone who has applied for this program through the AHCCCS Administration.

This 5 year report outlines changes that are currently in the rulemaking process; the proposed rulemaking has been filed with the Secretary of State and will be published in the A.A.R. on April 22, 2016.

II. Five Year Report on 9 A.A.C. 30 Art 1-4 rules:

General and specific statutes authorizing the rule:

A.R.S. §§ 36-2903(O) and 36-2903.01(F) provides general authority to AHCCCS to adopt rules.

A.R.S. § 36-2907(A)(4) provides the specific authority to the AHCCCS Administration to assist a person in obtaining medications through a Medicare Prescription Part D program.

Objective of the rule:

R9-30-101 – The objective of the rule is to provide definitions for terms used within the Medicare Prescription Drug Program.

R9-30-201 - The objective of the rule is to describe when and how the AHCCCS Administration may assist an applicant in applying for Extra Help.

R9-30-202 - The objective of the rule is to inform the public that they have the opportunity to apply with the Administration at any time.

R9-30-203 - The objective of the rule is to provide the public information on how to apply for the Extra Help program.

R9-30-204 – The objective of the rule is to provide the public with information about an applicant's ability to choose a representative and also advise an applicant that they can receive assistance from the Administration.

R9-30-205 - The objective of the rule is to inform the public to obtain a SSN number in order to meet the eligibility requirements.

R9-30-206 - The objective of the rule is to provide Arizona residency as an eligibility requirement.

R9-30-207 - The objective of the rule is to provide the income eligibility calculation for the extra help program.

R9-30-208 - The objective of the rule is to specify that a person residing in a penal institution is not eligible for this program.

R9-30-209 - The objective of the rule is to describe the resource eligibility determination process for the Extra Help program.

R9-30-210 - The objective of the rule is to allow AHCCCS to obtain the information needed to determine eligibility.

R9-30-211 - The objective of the rule is to provide information to the public of the Medicare eligibility requirement for extra help.

R9-30-212 - The objective of the rule is to inform the public what the timeframe by when the agency will make an eligibility determination.

R9-30-213 - The objective of the rule is to provide the public information of the amount of assistance that the Extra Help program provides. The Extra Help amounts provided are set by federal regulations which are incorporated by reference. (The premium subsidy is in 423.780, copayment subsidy 423.782, deductibles 423.782, donut hole assistance 423.782, etc.)

R9-30-214 - The objective of the rule is to provide the public information regarding notice requirements when an eligibility determination is made.

R9-30-215 - The objective of the rule is to provide the public with the date eligibility will go into effect for the Extra Help program.

R9-30-216 - The objective of the rule is to provide the public with an explanation of the circumstances that can cause discontinuance or changes in benefit amounts.

R9-30-217 - The objective of the rule is to provide the public the timeframe when a redetermination will take place.

R9-30-218 - The objective of the rule is to provide the public information on how to report changes that occur in their household to the Administration.

R9-30-301 - The objective of the rule is to notify the public that the Administration does not provide pharmaceutical services.

R9-30-401 - The objective of the rule is to provide the public information on how to request a state fair hearing.

R9-30-402 - The objective of the rule is to provide the public information on their state fair hearing rights.

Effectively meets its objectives, including any available data supporting conclusion:

Chapter 30 rules meet the objectives listed above. No data was attained.

Consistent with Statutes, rules, (including Federal, State, Waiver, Policy)

Chapter 30 rules are consistent with statute and federal law, a clarification to the following rules is recommended, these rules are currently consistent with federal laws.

R9-30-207 – An amendment was made to 42 USC 1395w – 114(a)(3), which will change 20 CFR 418.3335. The amendment states that “in-kind support” and “maintenance” are not counted as part of the Income calculation. The Medicare Improvements for Patients and Providers Act (MIPPA) was signed into law on 7/15/08 and these provisions were implemented effective 1/1/10. This change is enforced consistent with federal regulations.

R9-30-209 - An amendment was made to 42 USC 1395w – 114(a)(3), which will change 20 CFR 418.3425. The amendment states that the value of any life insurance policy is not counted as part of the Resource calculation. The MIPPA was signed into law on 7/15/08 and these provisions were implemented effective 1/1/10. This change is enforced consistent with federal regulations.

Is enforced:

Chapter 30 rules are enforced with no issues.

Clarity, conciseness and understandability of the rule:

Chapter 30 rules are clear, concise and understandable, with the exceptionof the following rule clarifications:

R9-30-204 – The Administration recommends repeal of this rule since subsection (A) should be moved to R9-30-203(C)(2) and subsection (B) is already addressed within R9-30-201(A).

R9-30-205 – The Administration recommends repealing this rule and combining all the eligibility requirements into one rule.

R9-30-206 - The Administration recommends repealing this rule and combining all the eligibility requirements into one rule.

R9-30-207 – An amendment was made to 42 USC 1395w – 114(a)(3), which will change 20 CFR 418.3335. “In-kind support” and “maintenance” are not counted as part of the Income calculation. A clarification in rule is needed to add this exception.

R9-30-209 - An amendment was made to 42 USC 1395w – 114(a)(3), which will change 20 CFR 418.3425. The value of any life insurance policy is not counted as part of the Resource calculation. A clarification in rule is needed to add this exception.

R9-30-210 – The Administration recommends repealing this rule and combining all the eligibility requirements into one rule.

R9-30-211 – The Administration recommends the CFR incorporation by reference date be updated with the latest publication date for 20 CFR 418.3010.

R9-30-212 – The Administration recommends adding a crossreference to 42 CFR 435.911 describing the timeframe requirements and exceptions rather than specifying 45 days.

R9-30-213 – The Administration recommends the CFR incorporation by reference date be updated with the latest publication date for the CFR's listed in the rule.

R9-30-215 – The Administration recommends removing the date of January 1, 2006 for conciseness of the rule. The date is no longer is necessary; the date only applied at the beginning of the program.

R9-30-401 – The Administration recommends that the rules related to State Fair Hearings be combined into the general requirement section.

R9-30-402 - The Administration recommends that the rules related to State Fair Hearings be combined into the general requirement section.

Had written criticisms in the past five years, including written analyses submitted questioning if the rule is based on valid scientific or reliable principles or methods:

Chapter 30 regulations did not have any written criticisms or analyses submitted in the past five years.

Comparison of estimated economic, small business, and consumer impact.

The economic impact estimated at the time of rule promulgation has not been significantly different than the actual economic impact. There have not been any applicants for the Extra Help program applying through the Administration since the inception of these regulations.

Was there any analysis submitted to the agency by another person regarding the rule's impact on this state's business competiveness as compared to the competitiveness of businesses in other states:

Chapter 30 rules did not have an analyses submitted regarding the rule's impact on state business or compared to competitiveness of businesses in other states.

If applicable, has the agency completed the course of action indicated in the agency's previous five-year review:

The Administration is in process of completing the recommended course of action described in the previous 5yr report within the rulemaking proposed with an estimated effective date of October 1, 2016.

Has there been a determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Administration believes the rules as written impose the least burden and costs when meeting their objectives.

Are the rules more stringent than a corresponding federal law:

The rules as written are not more stringent than federal law.

Does the rule comply with section 41-1037 for issuance of permit, license or agency authorization:

Not applicable, the Administration does not issue permits, license or agency authorization for the imposition of the Extra Help program requirements.

Course of action, including the month and year when the agency anticipates submitting rules to the GRRC to amend repeal or make a rule:

R9-30-204 – The Administration intends to submit a rulemaking to Council by June 2016.

R9-30-205 – The Administration intends to submit a rulemaking to Council by June 2016.

R9-30-206 – The Administration intends to submit a rulemaking to Council by June 2016.

R9-30-207 – The Administration intends to submit a rulemaking to Council by June 2016.

R9-30-209 - The Administration intends to submit a rulemaking to Council by June 2016.

R9-30-210 - The Administration intends to submit a rulemaking to Council by June 2016.

R9-30-211 - The Administration intends to submit a rulemaking to Council by June 2016.

R9-30-212 – The Administration intends to submit a rulemaking to Council by June 2016.

R9-30-213 - The Administration intends to submit a rulemaking to Council by June 2016.

R9-30-215 – The Administration intends to submit a rulemaking to Council by June 2016.

R9-30-401 - The Administration intends to submit a rulemaking to Council by June 2016.

R9-30-402 - The Administration intends to submit a rulemaking to Council by June 2016.

TITLE 9. HEALTH SERVICES

CHAPTER 30. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM MEDICARE PART D PRESCRIPTION COVERAGE EXTRA HELP SUBSIDY PROGRAM

Editor's Note: 9 A.A.C. 30, consisting of Article 1 through Article 4, Sections R9-30-101, R9-30-201 through R9-30-218, R9-30-301, and R9-30-401 through R9-30-402, made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

Editor's Note: 9 A.A.C. 30, which formerly contained the rules for AHCCCS - Premium Sharing Program, repealed by summary rulemaking at 9 A.A.R. 4358, with an interim effective date of October 10, 2003. The rescinded Chapter is on file in the Office of the Secretary of State (Supp. 03-3). Notice of Final Summary Rulemaking published at 10 A.A.R. 875; interim effective date of October 10, 2003 becomes permanent effective date April 4, 2004 (Supp. 04-1).

ARTICLE 1. DEFINITIONS

Article 1, consisting of Section R9-30-101, made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

Section
R9-30-101. General Definitions

ARTICLE 2. ELIGIBILITY

Article 2, consisting of Sections R9-30-201 through R9-30-218, made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

Section
R9-30-201. General
R9-30-202. Opportunity to Apply
R9-30-203. How to File an Application
R9-30-204. Assistance with an Application
R9-30-205. Social Security Number (SSN)
R9-30-206. Residency
R9-30-207. Income
R9-30-208. Ineligible Person
R9-30-209. Resources
R9-30-210. Verification
R9-30-211. Medicare Requirements
R9-30-212. Eligibility Determination
R9-30-213. Determination of Extra Help Amount
R9-30-214. Notice of Eligibility Determination by AHCCCS
R9-30-215. Effective Date of Eligibility
R9-30-216. Discontinuance of Eligibility or Change in the Extra Help Amount
R9-30-217. Redetermination
R9-30-218. Reporting Changes

ARTICLE 3. SERVICES

Article 3, consisting of Section R9-30-301, made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

Section
R9-30-301. Legal Obligations

ARTICLE 4. GRIEVANCE SYSTEM

Article 4, consisting of Sections R9-30-401 through R9-30-402, made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

Section
R9-30-401. State Fair Hearing Request
R9-30-402. State Fair Hearing for an Applicant or a Member

ARTICLE 1. DEFINITIONS

R9-30-101. General Definitions

In addition to definitions contained under 20 CFR 418.3010, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

"Act" means the Social Security Act.

"AHCCCS" means the Arizona Health Care Cost Containment System.

"Extra Help" means the subsidies that are available for Medicare Part D premiums, deductibles, and co-payments in accordance with Section 1860D-14 of the Social Security Act (42 U.S.C. 1395w-114).

"SSA" means the Social Security Administration.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

ARTICLE 2. ELIGIBILITY

R9-30-201. General

A. In accordance with the requirements of Section 1860D-14(a)(3) of the Act (42 U.S.C. 1395w-114(a)(3)), the applicant may apply for Extra Help with the SSA or with AHCCCS. AHCCCS shall offer to help an applicant complete the SSA's application for Extra Help. If the applicant declines to apply with SSA for the Extra Help program, AHCCCS shall determine eligibility for Extra Help under this Article.

B. Confidentiality. The Administration shall maintain the confidentiality of an Extra Help applicant's or member's records and limit the release of safeguarded information under R9-22-512.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-202. Opportunity to Apply

The Administration shall provide the opportunity to apply without delay.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-203. How to File an Application

A. To apply for the Extra Help with AHCCCS, a person shall submit a written application form prescribed by AHCCCS to any AHCCCS office or outstation location.

B. The application is considered filed and complete under R9-22-1501(D).

C. An application shall be submitted by:
1. The applicant, or
2. The applicant's personal representative.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-204. Assistance with an Application

A. AHCCCS shall allow a personal representative of an applicant's choice to accompany, assist, and represent the applicant in the application process.

B. Assistance by AHCCCS. If requested, AHCCCS shall help a person complete an application.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-205. Social Security Number (SSN)
To be eligible for Extra Help, a person shall furnish a SSN or apply for a SSN.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-206. Residency
To be eligible for Extra Help, a person shall reside in Arizona.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-207. Income

A. AHCCCS shall calculate countable income under 20 CFR 418.3301 through 418.3350, as of December 30, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

B. AHCCCS shall determine income eligibility under 42 CFR 423.773 as of January 28, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-208. Ineligible Person
A person residing in a penal institution is not eligible under this Article.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-209. Resources

A. AHCCCS shall calculate countable resources under 20 CFR 418.3401 through 418.3425, as of December 30, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

B. AHCCCS shall determine resource eligibility under 42 CFR 423.773, as of January 28, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-210. Verification
To be eligible for Extra Help, a person shall provide verification, or authorize the release of verification, for all information necessary to complete the determination of eligibility.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-211. Medicare Requirements
A person is not eligible for Extra Help unless the person is a Medicare beneficiary as defined in 20 CFR 418.3010, December 30, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-212. Eligibility Determination
Determinations of eligibility for Extra Help under this Article are made by AHCCCS within 45 days of the date of the application being filed if the individual applies with AHCCCS.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-213. Determination of Extra Help Amount
AHCCCS shall determine the amount of an applicant or member's Extra Help under 42 CFR 423.773, 42 CFR 423.780, and 42 CFR 423.782, as of January 28, 2005, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-214. Notice of Eligibility Determination by AHCCCS

A. Notice. The administration shall send an applicant written notice of the eligibility decision. The notice shall include a statement of the action and an explanation of an applicant or member's hearing rights under 9 A.A.C. 34, Article 1.

B. Approval. If AHCCCS determines that the applicant is eligible, the notice shall contain the effective date of eligibility and the amount of the Extra Help.

C. Denial. If AHCCCS determines that the applicant is not eligible, the notice shall contain:
1. The effective date of the decision;
2. A statement detailing the reason for the decision, including specific financial calculations and the financial eligibility standard, if applicable; and
3. The legal authority supporting the decision.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-215. Effective Date of Eligibility
The effective date of eligibility is the first day of the first month that the applicant is eligible for Extra Help under this Article, but no

earlier than the month in which the applicant applies or January 1, 2006, whichever is later.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-216. Discontinuance of Eligibility or Change in the Extra Help Amount

A. Discontinuance. AHCCCS shall discontinue a person's eligibility if any of the conditions of eligibility under this Article are not met.

B. Change in the amount of subsidy. AHCCCS will adjust the amount of the Extra Help, if a change in countable income or a change in countable resources causes the subsidy amount to change.

C. Notice.
1. AHCCCS shall follow the discontinuance notice requirements under R9-22-1501(K).
2. AHCCCS will issue a notice if there is a change in the amount of the Extra Help.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-217. Redetermination

AHCCCS shall redetermine an individual's eligibility at least every 12 months.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-218. Reporting Changes

A member shall report any changes to AHCCCS, under R9-22-1501(H).

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

ARTICLE 3. SERVICES

R9-30-301. Legal Obligations

The Administration and Administration's designee are under no legal obligation to provide pharmaceutical services to individuals approved for Extra Help. Pharmaceutical services are provided by Medicare.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

ARTICLE 4. GRIEVANCE SYSTEM

R9-30-401. State Fair Hearing Request

A request for State Fair Hearing under this Chapter shall comply with 9 A.A.C. 34, Article 1.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

R9-30-402. State Fair Hearing for an Applicant or a Member

A State Fair Hearing for a member or an applicant under this Chapter shall comply with 9 A.A.C. 34, Article 1.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 866, effective March 7, 2006 (Supp. 06-1).

36-2903. Arizona health care cost containment system; administrator; powers and duties of director and administrator; exemption from attorney general representation; definition

A. The Arizona health care cost containment system is established consisting of contracts with contractors for the provision of hospitalization and medical care coverage to members. Except as specifically required by federal law and by section 36-2909, the system is only responsible for providing care on or after the date that the person has been determined eligible for the system, and is only responsible for reimbursing the cost of care rendered on or after the date that the person was determined eligible for the system.

B. An agreement may be entered into with an independent contractor, subject to title 41, chapter 23, to serve as the statewide administrator of the system. The administrator has full operational responsibility, subject to supervision by the director, for the system, which may include any or all of the following:

1. Development of county-by-county implementation and operation plans for the system that include reasonable access to hospitalization and medical care services for members.

2. Contract administration and oversight of contractors, including certification instead of licensure for title XVIII and title XIX purposes.

3. Provision of technical assistance services to contractors and potential contractors.

4. Development of a complete system of accounts and controls for the system including provisions designed to ensure that covered health and medical services provided through the system are not used unnecessarily or unreasonably including but not limited to inpatient behavioral health services provided in a hospital. Periodically the administrator shall compare the scope, utilization rates, utilization control methods and unit prices of major health and medical services provided in this state in comparison with other states' health care services to identify any unnecessary or unreasonable utilization within the system. The administrator shall periodically assess the cost effectiveness and health implications of alternate approaches to the provision of covered health and medical services through the system in order to reduce unnecessary or unreasonable utilization.

5. Establishment of peer review and utilization review functions for all contractors.

6. Assistance in the formation of medical care consortiums to provide covered health and medical services under the system for a county.

7. Development and management of a contractor payment system.

8. Establishment and management of a comprehensive system for assuring the quality of care delivered by the system.

9. Establishment and management of a system to prevent fraud by members, subcontracted providers of care, contractors and noncontracting providers.

10. Coordination of benefits provided under this article to any member.

The administrator may require that contractors and noncontracting providers are responsible for the coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage.
11. Development of a health education and information program.
12. Development and management of an enrollment system.
13. Establishment and maintenance of a claims resolution procedure to ensure that ninety per cent of the clean claims shall be paid within thirty days of receipt and ninety-nine per cent of the remaining clean claims shall be paid within ninety days of receipt. For the purposes of this paragraph, "clean claims" has the same meaning prescribed in section 36-2904, subsection G.
14. Establishment of standards for the coordination of medical care and patient transfers pursuant to section 36-2909, subsection B.
15. Establishment of a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.
16. Establishment of an employee recognition fund.
17. Establishment of an eligibility process to determine whether a medicare low income subsidy is available to persons who want to apply for a subsidy as authorized by title XVIII.
C. If an agreement is not entered into with an independent contractor to serve as statewide administrator of the system pursuant to subsection B of this section, the director shall ensure that the operational responsibilities set forth in subsection B of this section are fulfilled by the administration and other contractors as necessary.
D. If the director determines that the administrator will fulfill some but not all of the responsibilities set forth in subsection B of this section, the director shall ensure that the remaining responsibilities are fulfilled by the administration and other contractors as necessary.
E. The administrator or any direct or indirect subsidiary of the administrator is not eligible to serve as a contractor.
F. Except for reinsurance obtained by contractors, the administrator shall coordinate benefits provided under this article to any eligible person who is covered by workers' compensation, disability insurance, a hospital and medical service corporation, a health care services organization, an accountable health plan or any other health or medical or disability insurance plan including coverage made available to persons defined as eligible by section 36-2901, paragraph 6, subdivisions (b), (c), (d) and (e), or who receives payments for accident-related injuries, so that any costs for hospitalization and medical care paid by the system are recovered from any other available third party payors. The administrator may require that contractors and noncontracting providers are responsible for the

coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage. The system shall act as payor of last resort for persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2974 or section 36-2981, paragraph 6 unless specifically prohibited by federal law. By operation of law, eligible persons assign to the system and a county rights to all types of medical benefits to which the person is entitled, including first party medical benefits under automobile insurance policies based on the order of priorities established pursuant to section 36-2915. The state has a right to subrogation against any other person or firm to enforce the assignment of medical benefits. The provisions of this subsection are controlling over the provisions of any insurance policy that provides benefits to an eligible person if the policy is inconsistent with the provisions of this subsection.

G. Notwithstanding subsection E of this section, the administrator may subcontract distinct administrative functions to one or more persons who may be contractors within the system.

H. The director shall require as a condition of a contract with any contractor that all records relating to contract compliance are available for inspection by the administrator and the director subject to subsection I of this section and that such records be maintained by the contractor for five years. The director shall also require that these records be made available by a contractor on request of the secretary of the United States department of health and human services, or its successor agency.

I. Subject to existing law relating to privilege and protection, the director shall prescribe by rule the types of information that are confidential and circumstances under which such information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other provision of law, such rules shall be designed to provide for the exchange of necessary information among the counties, the administration and the department of economic security for the purposes of eligibility determination under this article. Notwithstanding any law to the contrary, a member's medical record shall be released without the member's consent in situations or suspected cases of fraud or abuse relating to the system to an officer of the state's certified Arizona health care cost containment system fraud control unit who has submitted a written request for the medical record.

J. The director shall prescribe rules that specify methods for:

1. The transition of members between system contractors and noncontracting providers.

2. The transfer of members and persons who have been determined eligible from hospitals that do not have contracts to care for such

persons.
K. The director shall adopt rules that set forth procedures and standards for use by the system in requesting county long-term care for members or persons determined eligible.
L. To the extent that services are furnished pursuant to this article, and unless otherwise required pursuant to this chapter, a contractor is not subject to title 20.
M. As a condition of the contract with any contractor, the director shall require contract terms as necessary in the judgment of the director to ensure adequate performance and compliance with all applicable federal laws by the contractor of the provisions of each contract executed pursuant to this chapter. Contract provisions required by the director shall include at a minimum the maintenance of deposits, performance bonds, financial reserves or other financial security. The director may waive requirements for the posting of bonds or security for contractors that have posted other security, equal to or greater than that required by the system, with a state agency for the performance of health service contracts if funds would be available from such security for the system on default by the contractor. The director may also adopt rules for the withholding or forfeiture of payments to be made to a contractor by the system for the failure of the contractor to comply with a provision of the contractor's contract with the system or with the adopted rules. The director may also require contract terms allowing the administration to operate a contractor directly under circumstances specified in the contract. The administration shall operate the contractor only as long as it is necessary to assure delivery of uninterrupted care to members enrolled with the contractor and accomplish the orderly transition of those members to other system contractors, or until the contractor reorganizes or otherwise corrects the contract performance failure. The administration shall not operate a contractor unless, before that action, the administration delivers notice to the contractor and provides an opportunity for a hearing in accordance with procedures established by the director. Notwithstanding the provisions of a contract, if the administration finds that the public health, safety or welfare requires emergency action, it may operate as the contractor on notice to the contractor and pending an administrative hearing, which it shall promptly institute.
N. The administration for the sole purpose of matters concerning and directly related to the Arizona health care cost containment system and the Arizona long-term care system is exempt from section 41-192.
O. Notwithstanding subsection F of this section, if the administration determines that according to federal guidelines it is more cost-effective for a person defined as eligible under section 36-2901, paragraph 6, subdivision (a) to be enrolled in a group health insurance plan in which the person is entitled to be enrolled, the administration may pay all of that person's premiums, deductibles, coinsurance and other cost

sharing obligations for services covered under section 36-2907. The person shall apply for enrollment in the group health insurance plan as a condition of eligibility under section 36-2901, paragraph 6, subdivision (a).
P. The total amount of state monies that may be spent in any fiscal year by the administration for health care shall not exceed the amount appropriated or authorized by section 35-173 for all health care purposes. This article does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.
Q. Notwithstanding section 36-470, a contractor or program contractor may receive laboratory tests from a laboratory or hospital-based laboratory for a system member enrolled with the contractor or program contractor subject to all of the following requirements:
1. The contractor or program contractor shall provide a written request to the laboratory in a format mutually agreed to by the laboratory and the requesting health plan or program contractor. The request shall include the member's name, the member's plan identification number, the specific test results that are being requested and the time periods and the quality improvement activity that prompted the request.
2. The laboratory data may be provided in written or electronic format based on the agreement between the laboratory and the contractor or program contractor. If there is no contract between the laboratory and the contractor or program contractor, the laboratory shall provide the requested data in a format agreed to by the noncontracted laboratory.
3. The laboratory test results provided to the member's contractor or program contractor shall only be used for quality improvement activities authorized by the administration and health care outcome studies required by the administration. The contractors and program contractors shall maintain strict confidentiality about the test results and identity of the member as specified in contractual arrangements with the administration and pursuant to state and federal law.
4. The administration, after collaboration with the department of health services regarding quality improvement activities, may prohibit the contractors and program contractors from receiving certain test results if the administration determines that a serious potential exists that the results may be used for purposes other than those intended for the quality improvement activities. The department of health services shall consult with the clinical laboratory licensure advisory committee established by section 36-465 before providing recommendations to the administration on certain test results and quality improvement activities.
5. The administration shall provide contracted laboratories and the department of health services with an annual report listing the quality improvement activities that will require laboratory data. The report

shall be updated and distributed to the contracting laboratories and the department of health services when laboratory data is needed for new quality improvement activities.

6. A laboratory that complies with a request from the contractor or program contractor for laboratory results pursuant to this section is not subject to civil liability for providing the data to the contractor or program contractor. The administration, the contractor or a program contractor that uses data for reasons other than quality improvement activities is subject to civil liability for this improper use.

R. For the purposes of this section, "quality improvement activities" means those requirements, including health care outcome studies specified in federal law or required by the centers for medicare and medicaid services or the administration, to improve health care outcomes.

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a

corrective action plan and a strategy to remedy the error.
4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.
5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.
6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.
7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:
(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.
C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.
D. The director may adopt rules or procedures to do the following:
1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.
2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.
3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.
4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.
E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.
F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to

carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.
G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:
1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.
2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity

and nursery tiers.
3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.
4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:
(a) An admission face sheet.
(b) An itemized statement.
(c) An admission history and physical.
(d) A discharge summary or an interim summary if the claim is split.
(e) An emergency record, if admission was through the emergency room.
(f) Operative reports, if applicable.
(g) A labor and delivery room report, if applicable.
Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:
(a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.
6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.
7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.
8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.
9. For graduate medical education programs:
(a) Beginning September 30, 1997, the administration shall establish a

separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs

must be approved by the administration.
(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.
(d) The administration shall develop, by rule, the formula by which the monies are distributed.
(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.
(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.
(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.
11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.
12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.
H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.
I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.
J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:
1. The type of third-party payments to be monitored pursuant to this subsection.
2. The percentage of third-party payments that is collected by a

contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.
K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:
1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.
2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:
(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.
(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.
(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.
3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a

member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.
Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.
R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.
S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.
T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:
1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.
2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.
U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.
V. For the purposes of this section, "disproportionate share payment"

means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

36-2907. Covered health and medical services; modifications; related delivery of service requirements; definition

(L15, Ch. 195, sec. 57. Eff. 7/1/16)

A. Subject to the limitations and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital for the care and treatment of inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.

2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner.

3. Other laboratory and x-ray services ordered by a physician or a primary care practitioner.

4. Medications that are ordered on prescription by a physician or a dentist licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.

5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.

6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.

7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.

8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.

9. Podiatry services ordered by a primary care physician or primary care practitioner.
10. Nonexperimental transplants approved for title XIX reimbursement.
11. Ambulance and nonambulance transportation, except as provided in subsection G of this section.
12. Hospice care.
B. The limitations and exclusions for health and medical services provided under this section are as follows:
1. Circumcision of newborn males is not a covered health and medical service.
2. For eligible persons who are at least twenty-one years of age:
(a) Outpatient health services do not include occupational therapy or speech therapy.
(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to twelve thousand five hundred dollars per contract year.
(c) Percussive vests and orthotics are not covered health and medical services.
(d) Durable medical equipment is limited to items covered by medicare.
(e) Podiatry services do not include services performed by a podiatrist.
(f) Nonexperimental transplants do not include pancreas-only transplants.
(g) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.
C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.
D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum limitations for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.
E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules for the provision of transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. Additional, reduced or modified hospitalization and medical care benefits may be provided under the system to enrolled members who are eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c), (d) or (e).

K. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:
1. Emergency services and specialty services provided pursuant to section 36-2908.
2. That the director may permit the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.
L. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.
M. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for the transfer of patients, the transfer of medical records and the initiation of medical care.
N. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

ARIZONA DEPARTMENT OF PUBLIC SAFETY (F-16-0606)
Title 13, Chapter 10, Article 1, Determination of Alcohol Concentration

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-6**

TO: Members of the Governor's Regulatory Review Council

FROM: Shama Thathi, Staff Attorney

DATE : May 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF PUBILC SAFETY (F-16-0606)**
Title 13, Chapter 10, Article 1, Determination of Alcohol Concentration

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Public Safety (Department) is to "prevent crime, apprehend violators, train law enforcement personnel and promote public safety." Laws 2012, Ch. 215, § 3.

This five-year-review report covers nine rules and fourteen exhibits in A.A.C. Title 13, Chapter 10, which provide guidance and standards in alcohol testing for Arizona law enforcement agencies, forensic laboratories and related personnel.

The Department has allowed eleven Exhibits, E-1 through F-5, which provide standardized operational procedures for two types of evidential breath-test (EBT) devices that are no longer used, to expire pursuant to A.R.S. § 41-1056(J).

Article Contents

Article 1 contains nine rules and twenty-five exhibits, related to determination of alcohol concentration, which address definitions; analyst methods, approval of additional methods; breath-testing devices; testing procedures; permits and certificates; qualifications; application processes; examination and quality assurance requirements for analysts; revocation or suspension of permits, and appeals.

Year that Each Rule was Last Amended or Newly Made

All rules and exhibits were made by final rulemaking on May 18, 2006.

Proposed Action

The Department plans to amend R13-10-103, R13-10-104, and R13-10-107. The Department anticipates submitting a final rulemaking to the Council by May 31, 2017.

Summary of Reasons for the Proposed Action

The Department indicates that the rules should be amended to improve effectiveness, clarity, conciseness, and understandability.

Exemption or Request and Approval for Exception from the Moratorium

The Department indicates that it will seek an approval for exception from the Moratorium once this report is approved by the Council.

Substantive or Procedural Concerns

None.

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

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

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

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

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

- R13-10-103 contains performance criteria for EBT devices that are no longer used in Arizona.
- R13-10-104 contains outdated cross-references to exhibits for obsolete EBT devices, specifically, all E and F exhibits in subsections A2, A3, and B.
- R13-10-107 should remove the thirty-day notice requirement for renewals, as this requirement is no longer enforced by the Department.

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

No. The Department notes that it has not received any written criticisms of the rules during the last five years.

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

Yes. The Department cites general authority for all of the rules reviewed under A.R.S. § 41-1713(A)(4), which states that the Director, as administrative head of the Department, shall make rules necessary for the operation of the Department.

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

- Under A.R.S. § 28-1322(C), the Department "shall adopt rules prescribing the approval of quantitative preliminary breath testing devices."
- A.R.S. § 28-1323 addresses breath-test admissibility for court trial.
- Under A.R.S. § 28-1324, the Department "shall adopt rules prescribing methods and procedures for the administration of breath tests to determine alcohol concentration."
- Under A.R.S. § 28-1325, the Department has the authority to issue and revoke breath-test operator permits.
- Under A.R.S. § 28-1326(A), the Department "shall adopt rules prescribing the approval of methods for the analysis of blood or other bodily substances to determine blood alcohol concentration."

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

Yes. The Department indicates that the rules are consistent with other rules and statutes.

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

Yes. The Department enforces the rules as written, with one exception. The Department does not enforce the thirty-day notice requirement in R13-10-107 because the Department believes it is the permit or certificate holder's responsibility to seek renewal in a timely manner.

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

Yes. The Department indicates that the rules are clear, concise, and understandable, with two exceptions: R13-10-103 and R13-10-104. In addition to grammatical changes and minor updates, the Department plans to add the National Highway Traffic Safety Administration compliance product list to R13-10-103 and delete outdated references to exhibits that are no longer used in R13-10-104.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

The Department indicates that the rules do not correspond to any federal laws.

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

Not applicable.

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

a. <u>The rules require issuance of a regulatory permit, license or agency authorization?</u>

Not applicable, as the rules were adopted prior to July 29, 2010.

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

Not applicable.

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

Yes. In the previous five-year-review report, the Department indicated that R13-10-107 was not enforced as written and the rule would be amended by June 2013. However, that rulemaking did not occur and remains a current rulemaking requirement.

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

Yes. The Department plans to amend R13-10-103, R13-10-104, and R13-10-107. As approval from the Governor's Office is required before the Department can proceed with development of the rules, the Department intends to submit a final rulemaking to the Council by May 31, 2017.

<u>Conclusion</u>

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

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

MEETING DATE: June 7, 2016 **AGENDA ITEM: F-6**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economist

DATE : May 20, 2016

SUBJECT: **ARIZONA DEPARTMENT OF PUBILC SAFETY (F-16-0606)**
Title 13, Chapter 10, Article 1, Determination of Alcohol Concentration

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

1. Economic Impact Comparison

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

The rules in Chapter 10, Article 1 outline the procedures and requirements for breath alcohol testing. There are currently approximately 7,000 valid breath alcohol Operator permits, 420 breath-alcohol Quality Assurance Specialist permits, and 20 breath-testing Instructor permits issued in Arizona. The Department maintains approximately 266 Intoxilyzer and 8,000 breath-test devices for Arizona law enforcement agencies. There are currently approximately 67 blood alcohol analyst permits in effect in Arizona.

The Department believes the economic impact has been as predicted for the rules in Article 1. There have been no unanticipated cost or revenue effects associated with the rulemaking.

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

The Department has determined that the rules in Article 1 impose the least burden and costs to the regulated community. Since the last rulemaking, the rules did not require anyone conducting alcohol testing to purchase new equipment. The number

of applicants able to pass the examinations for an individual to operate, maintain and instruct others on the use of breath-testing equipment have remained the same.

However, the Department intends to amend several rules in order to correct a number of simple clarifications; grammatical changes; minor updates; renaming; and deletion of references to exhibits no longer in use is required. The Department intends to amend the following rules: R13-10-103, R13-10-104 and R13-10-107. Due to the Intoxilyzer Model 5000EN no longer being used, the Department intends to expire Exhibits E-1 through F-5 pursuant to A.R.S. § 41-1056(J).

The Department intends to submit a final rulemaking to the council by May 31, 2017 or, within one year of the council's approval of this current review report pending the outcome of a rulemaking waiver request under Executive Order 2016-03.

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

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

4. Conclusion

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

ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

"Courteous Vigilance"

DOUGLAS A. DUCEY Governor

FRANK L. MILSTEAD Director

March 25, 2016

RECEIVED

APR - 6 2016

GRRC

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

Dear Ms. Ong:

As required by Arizona Revised Statute §41-1056, the Department of Public Safety submits for your approval a five-year review report of its rules listed in Title 13 Public Safety, Chapter 10 Alcohol Testing.

The Department reviewed Chapter 10, Article 1 totaling nine rules and twenty-five exhibits.

The Department does intend for Exhibits E-1 through F-5 to expire pursuant to A.R.S. § 41-1056(J).

The Department does not have any active Substantive Policy Statements for this chapter and therefore is in compliance with A.R.S. §41-1091.

If you have any questions regarding this report, please contact Mr. Paul Swietek, Police Planner at (602) 223-2049.

Thank you for your consideration.

Sincerely,

Frank L. Milstead, Colonel
Director

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Enclosure

ARIZONA DEPARTMENT OF PUBLIC SAFETY

ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT

TITLE 13 – PUBLIC SAFETY

CHAPTER 10 – ALCOHOL TESTING

ARTICLE 1 – DETERMINATION OF ALCOHOL CONCENTRATION

February 19, 2016

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INTRODUCTION

The Department of Public Safety, which is created by A.R.S. § 41-1711, is charged with, among other things, preventing crime and protecting the public. The Department's Technical Services Division, Scientific Analysis Bureau is statutorily responsible for providing guidance and standards in alcohol testing for Arizona law enforcement agencies, forensic laboratories and related personnel.

Included in this report is a review of the following nine rules and twenty-five exhibits:

- R13-10-101 Definitions
- R13-10-102 Analyst Methods; Approval of Additional Methods
- R13-10-103 Breath-testing Devices
- R13-10-104 Testing Procedures
- R13-10-105 Permits and Certificates
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- Exhibit H-4 Standard Calibration Procedure Alco Sensor RBT AZ

INFORMATION IDENTICAL FOR A GROUP OF RULES

Under Arizona Administrative Code (A.A.C.) R1-6-301(B), the following information is provided only once because it is identical for a group of rules:

1. Authorization of the rule by existing statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Department may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-1322(C) authorizes the Department to adopt rules prescribing the approval of quantitative preliminary breath-testing devices.

- A.R.S. § 28-1324 authorizes the Department to adopt rules prescribing the methods and procedures for the administration of breath tests to determine alcohol concentration.

- A.R.S. § 28-1326(A) authorizes the Department to adopt rules prescribing the approval of methods for the analysis of blood or other substances to determine blood-alcohol concentration.

Additional relevant statutes:

- A.R.S. § 28-1323 which addresses breath-test admissibility for court trial.
- A.R.S. § 28-1325 which references issuance and revocation of breath-test operator permits.

2. Objective

The objective of Rules 101 through 109 are listed in the individual analysis.

- Exhibits A through D: The objective of the exhibits is to provide standardized applications for the different types of permits and certificates issued by the Department under the rules.

- Exhibits E-1 through H-4: The objective of the exhibits is to provide standardized operational, calibration check and quality assurance procedure record forms for the different types of evidential breath-test devices approved by the Department.

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rules are generally effective in accomplishing their objectives. However, as indicated in the individual analysis, the Department believes the effectiveness of the following rules could be improved: R13-10-103, R13-10-104 and R13-10-107. The Department intends for Exhibits E-1 through F-5 to expire pursuant to A.R.S. § 41-1056(J).

4. Consistency of the Rule with State and Federal Statues or Other Rules

The Department determined that the rules are consistent with state and federal statutes and other rules.

5. Agency Enforcement Policy

The Department enforces the current rules with the exception of R13-10-107(A-D).

6. Clarity, Conciseness, and Understandability of the Rule

The rules are clear, concise, and understandable with the exception of R13-10-103 and R13-10-104.

7. Summary of Written Criticisms of the Rules Received in the Last Five Years

The Department has received no written criticisms of the rules in the last five years.

8. A Review of the Economic Impact Statement (EIS) Prepared on the Last Making of the Rule.

The Department believes that the statement prepared in 2006 was accurate for the time period and is still accurate for today's economy. There have been no unanticipated cost or revenue effects associated with the rulemaking.

This determination performed via a comparison of the current 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 (May 18, 2006).

The Legislature transferred regulatory authority for the rules from the Department of Health Services (DHS) to the Department of Public Safety (DPS) through Arizona Session Laws, 2003, Chapter 213, which directed that the rules adopted by DHS continue in effect and be administered and enforced by DPS until superseded by rules adopted by DPS. The final rulemaking for the rules adopted by DPS went into effect May 18, 2006. The first 5-year review occurred in May, 2011 and this is the second 5-year review submitted by the Department regarding the rules.

The Department has determined that the rules impose minimal burden and costs to persons regulated by the rules. There are no fees associated with these rules and there are only minimal travel-related costs for persons attending mandatory training conducted by the Department. The majority of training is provided locally or available in an existing web-based format generating little or no travel-related expenses. The rules did not require anyone conducting alcohol testing to purchase new equipment. The number of applicants able to pass the examinations for an individual to operate,

maintain and instruct others on the use of breath-testing equipment have remained the same.

There are currently approximately 7,000 valid breath alcohol Operator permits, 420 breath-alcohol Quality Assurance Specialist permits, and 20 breath-testing Instructor permits issued in Arizona. The Department maintains approximately 266 Intoxilyzer 8000 breath-test devices for Arizona law enforcement agencies. There are currently approximately 67 blood alcohol analyst permits in effect in Arizona.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis by any person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of business in other states.

10. Agency Stated Course of Action from the Previous Five-Year Report

The 2011 Five-Year Review Report indicated that the Department did not enforce R13-10-107 as written. This is identified and detailed in the section on the analysis of the individual rules. The last review indicated that it was no longer necessary to specify a timeframe for the submission of recertification applications and that rulemaking would address this as indicated. The rule making did not occur and remains a current rule making requirement.

The Department will amend R13-10-107, to address the issues identified in the individual analysis section. The Department intends to submit a final rulemaking to the council by May 31, 2017 or, within one year of the council's approval of this current review report pending the outcome of a rulemaking waiver request under Executive Order 2016-03.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined that the public safety benefits of the rules will outweigh the costs to the State and impose the least burden and cost to the regulated industry.

12. Determination of the Rules' Stringency Against Federal Law

There are no applicable federal laws.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010, in Compliance with A.R.S. § 41-1037

None of the rules reviewed were adopted or amended after July 29, 2010; therefore, this analysis is not required for these rules.

14. Course of Action for the Rules

The Department intends to amend the following rules: R13-10-103, R13-10-104 and R13-10-107. The Department intends to expire Exhibits E-1 through F-5 pursuant to A.R.S. § 41-1056(J).

The Department intends to submit a final rulemaking to the council by May 31, 2017 or, within one year of the council's approval of this current review report pending the outcome of a rulemaking waiver request under Executive Order 2016-03.

ANALYSIS OF INDIVIDUAL RULES

ARTICLE 1 – DETERMINATION OF ALCOHOL CONCENTRATION

R13-10-101 Definitions

2. Objective

The objective of this rule is to clarify the rules by defining words that are used in a manner specific to the rules.

R13-10-102 Analyst Methods; Approval of Additional Methods

2. Objective

The objective of this rule is to specify performance criteria for blood-alcohol analysis methods; to specify existing approved blood-alcohol analysis methods; and to describe the procedure by which an applicant for an analyst permit may submit a request for the approval of a new method of blood-alcohol analysis.

R13-10-103 Breath-testing Devices

2. Objective

The objective of this rule is to specify performance criteria for breath-testing devices; to specify those breath-testing devices which are currently approved by the Department; and to describe the conditions under which an approved breath-testing device can be disapproved by the Department.

3. Effectiveness of the Rule in Achieving the Objective

The rule can be made more effective by removing the Intoxilyzer 5000 and Intoxilyzer 5000EN as they are no longer utilized as evidentiary breath-tests (EBT) in Arizona. The National Highway Traffic Safety Administration (NHTSA) Conforming Product List of

EBT devices will be incorporated by reference replacing the 2004 version with 77 FR 35747-35751 dated June 14, 2012.

6. Clarity, Conciseness, and Understandability of the Rule

A number of simple clarifications; grammatical changes; minor updates; renaming; device and related exhibit modifications; and addition of NHTSA products list is required.

R13-10-104 Testing Procedures

2. Objective

The objective of this rule is to specify testing procedures and the quality assurance requirements for breath testing; to specify records which must be generated as the standard operating procedure for breath testing; and to describe the procedure for conducting duplicate breath tests.

3. Effectiveness of the Rule in Achieving the Objective

The rule can be made more effective by deleting the listed exhibits for the EBT devices no longer in use; specifically, all E and F exhibits in subsections A2, A3 and B.

6. Clarity, Conciseness, and Understandability of the Rule

A number of simple clarifications; grammatical changes; minor updates; renaming; and deletion of references to exhibits no longer in use is required.

R13-10-105 Permits and Certificates

2. Objective

The objective of this rule is to describe the types of permits and certificates issued by the Department; to specify the terms and conditions of those permits and certificates; and to specify the action a permit or certificate holder is authorized to conduct.

R13-10-106 Qualifications

2. Objective

The objective of this rule is to specify the qualifications an individual must meet to be issued an analyst or breath-testing permit or certificate by the Department; and to describe the procedure by which the very first breath test permits and certificate are issued for a newly approved breath-test device.

R13-10-107 Application Processes

2. Objective

The objective of this rules is to specify the processes by which initial applications and renewals for analyst breath testing permits and certificates are made.

3. Effectiveness of the Rule in Achieving the Objective

The rule can be made more effective by removing the thirty-day notice for the renewal periods as this is not being enforced by the Department.

5. Agency Enforcement Policy

The Department does not enforce the thirty-day notice requirement in the rule. It is the responsibility of the holder of the permit or certificate to renew in a timely fashion. If

the permit or certificate has expired, the holder must complete proper certification materials in order to renew the permit or certificate.

R13-10-108 Examination and Quality Assurance Requirements for Analysts

2. Objective

The objective of this rule is to specify the requirements of the analyst proficiency testing program administered by the Department and the criteria for the quality assurance programs which must be maintained by the analysts.

R13-10-109 Revocation or Suspension of Permits; Appeals

2. Objective

The objective of this rule is to specify the conditions under which an analyst or breath-test permit may be revoked or suspended.

Exhibit E-1 Standard Operational Procedure Intoxilyzer Model 5000

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit E-2 Standard Calibration Check Procedure Intoxilyzer Model 5000

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit E-3 Standard Calibration Check Procedure Intoxilyzer Model 5000 (Option P)

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit E-4 Standard Quality Assurance Procedure Intoxilyzer Model 5000

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit E-5 Standard Quality Assurance Procedure Intoxilyzer Model 5000 (Option P)

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit E-6 Standard Operational Procedure Intoxilyzer Model 5000 – Without Vapor Recirculation and Without Keyboard

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit F-1 Standard Operational Procedure Intoxilyzer Model 5000EN

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit F-2 Standard Calibration Check Procedure Intoxilyzer Model 5000EN

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit F-3 Standard Calibration Check Procedure Intoxilyzer Model 5000EN (Option P)

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit F-4 Standard Quality Assurance Procedure Intoxilyzer Model 5000EN

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit F-5 Standard Quality Assurance Procedure Intoxilyzer Model 5000EN (Option P)

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

TITLE 13. PUBLIC SAFETY

CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY
ALCOHOL TESTING

(Authority: A.R.S. §§ 28-1322 through 28-1326 and 41-1713)

Editor's Note: This Chapter, consisting of Article 1, Sections R13-10-101 through R13-10-109, Exhibits A through D, Exhibits E-1, through E-6, F-1 through F-5, G-1 through G-6, and H-1, through H-4, made by final rulemaking at 12 A.A.R. 1916, effective May 18, 2006 (Supp. 06-2).

ARTICLE 1. DETERMINATION OF ALCOHOL CONCENTRATION

Article 1, consisting of Sections R13-10-101 through R13-10-109, Exhibits A through D, and Exhibits E-1 through E-6, F-1 through F-5, G-1 through G-6, and H-1 through H-4, made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Section
R13-10-101. Definitions
R13-10-102. Analyst Methods; Approval of Additional Methods
R13-10-103. Breath-testing Devices
R13-10-104. Testing Procedures
R13-10-105. Permits and Certificates
R13-10-106. Qualifications
R13-10-107. Application Processes
R13-10-108. Examination and Quality Assurance Requirements for Analysts
R13-10-109. Revocation or Suspension of Permits; Appeals
Exhibit A. Application for Blood Alcohol Analyst Permit
Exhibit B. Application for Breath Alcohol Operator Permit
Exhibit C. Application for Breath Alcohol Quality Assurance Specialist Permit
Exhibit D. Application for Breath Testing Instructor
Exhibit E-1. Standard Operational Procedure Intoxilyzer Model 5000
Exhibit E-2. Standard Calibration Check Procedure Intoxilyzer Model 5000
*
Exhibit E-3. Standard Calibration Check Procedure Intoxilyzer Model 5000 (Option P)
Exhibit E-4. Standard Quality Assurance Procedure Intoxilyzer Model 5000
*
Exhibit E-5. Standard Quality Assurance Procedure Intoxilyzer Model 5000 (Option P)
Exhibit E-6. Standard Operational Procedure Intoxilyzer Model 5000 - Without Vapor Recirculation and Without Keyboard
Exhibit F-1. Standard Operational Procedure Intoxilyzer Model 5000EN
Exhibit F-2. Standard Calibration Check Procedure Intoxilyzer Model 5000EN
Exhibit F-3. Standard Calibration Check Procedure Intoxilyzer Model 5000EN (Option P)
Exhibit F-4. Standard Quality Assurance Procedure Intoxilyzer Model 5000EN
Exhibit F-5. Standard Quality Assurance Procedure Intoxilyzer Model 5000EN (Option P)
Exhibit G-1. Standard Operational Procedure Intoxilyzer Model 8000
Exhibit G-2. Standard Calibration Check Procedure Intoxilyzer Model 8000
Exhibit G-3. Standard Calibration Check Procedure Intoxilyzer Model 8000 (Option P)
Exhibit G-4. Standard Quality Assurance Procedure Intoxilyzer Model 8000
Exhibit G-5. Standard Quality Assurance Procedure Intoxilyzer Model 8000 (Option P)
Exhibit G-6. Standard Operational and Quality Assurance Procedure Intoxilyzer Model 8000
Exhibit H-1. Standard Operational Procedure Alco Sensor RBT AZ
Exhibit H-2. Standard Calibration Check Procedure Alco Sensor RBT AZ
Exhibit H-3. Standard Quality Assurance Procedure Alco Sensor RBT AZ
Exhibit H-4. Standard Calibration Procedure Alco Sensor RBT AZ

ARTICLE 1. DETERMINATION OF ALCOHOL CONCENTRATION

R13-10-101. Definitions

In this Article, unless the context otherwise requires:

1. "Alcohol concentration" or "AC" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.
2. "Analyst" means an individual who has been issued an analyst permit by the Department to use approved methods to make alcohol concentration determinations from blood or other bodily substances.
3. "Analyst permit" means a document issued by the Department indicating the permit holder has been found qualified to utilize an approved method in the determination of alcohol concentrations.
4. "Analytical procedure" means a series of operations utilized by an analyst when employing an approved method in the determination of alcohol concentration.

5. "Calibration Check" means an operation utilizing a standard alcohol concentration solution to determine whether a device is accurately measuring alcohol concentrations that is performed as a Standard Calibration Check Procedure by a Quality Assurance Specialist at least every 31 days or performed as Concurrent Calibration Check Procedures by an Operator within a successfully completed test sequence bracketing a duplicate breath test.
6. "Concurrent Calibration Check Procedure" means an operation performed by an Operator, utilizing a standard alcohol concentration solution, within a successfully completed test sequence to determine whether a device is accurately measuring alcohol concentration during a duplicate breath test.
7. "Concurrent Quality Assurance Procedure" means operations performed by an Operator, including a Concurrent Calibration Check Procedure and diagnostic checks, within a successfully completed test sequence to determine whether a device is accurately and properly measuring alcohol concentration during a duplicate breath test.
8. "Deprivation period" means at least a 15-minute period immediately prior to a duplicate breath test during which period the subject has not ingested any alcoholic beverages or other fluids, eaten, vomited, smoked or placed any foreign object in the mouth.
9. "Determination" means an analysis of a specimen of blood, breath, or other bodily substance and expressing the results of the analysis in terms of alcohol concentration.
10. "Device" means a breath testing instrument.
11. "Duplicate breath test" means two consecutive breath tests that immediately follow a deprivation period, agree within 0.020 AC of each other, and are conducted at least five and no more than 10 minutes apart.
12. "Instructor" means a person approved by the Department to provide breath test training to prospective Operators and Quality Assurance Specialists on a specific approved device.
13. "Method" means an analytical technique utilized by an analyst or a device to make an alcohol concentration determination (e.g. gas chromatography, infrared spectrophotometry, or specific fuel cell detection.)
14. "Operator" means a person who has been issued an Operator permit from the Department to operate a specific approved device for the purpose of determining an alcohol concentration from a specimen of breath and to perform the Concurrent Quality Assurance Procedures, Concurrent Calibration Check Procedures, and diagnostic checks to determine whether a device is operating accurately and properly.
15. "Operator Permit" means a document issued by the Department indicating that the permit holder has been found qualified to operate and perform the associated Quality Assurance Procedures on a specific approved device.
16. "Periodic Maintenance" means a Quality Assurance Procedure consisting of either of the following, which determines whether a device is operating accurately and properly:
    a. Standard Calibration Check Procedure and Standard Quality Assurance Procedure, or
    b. Concurrent Calibration Check Procedures and Concurrent Quality Assurance Procedures performed within a successfully completed test sequence bracketing a duplicate breath test.
17. "Preliminary breath test" means a pre-arrest breath test.
18. "Preliminary breath tester" or "PBT" means any approved device used prior to an arrest for the purpose of obtaining a determination of alcohol concentration from a specimen of breath and includes any device included on the National Highway Traffic Safety Administration's Conforming Products List of Evidential Breath Measurement Devices as incorporated by reference in R13-10-103(F).
19. "Procedure" means a series of operations used by an Operator or a Quality Assurance Specialist when employing an approved device in the determination of alcohol concentration or performing associated quality assurance testing.
20. "Quality Assurance Procedure" means Periodic Maintenance consisting of either of the following, which determines whether a device is operating accurately and properly:
    a. Standard Calibration Check Procedure and Standard Quality Assurance Procedure, or
    b. Concurrent Calibration Check Procedures and Concurrent Quality Assurance Procedures performed within a successfully completed test sequence bracketing a duplicate breath test.
21. "Quality Assurance Specialist" means a person who has been issued a Quality Assurance Specialist permit from the Department to perform the Standard Calibration Check Procedure and the Standard Quality Assurance Procedure to determine the accurate and proper operation of a specific approved device.
22. "Quality Assurance Specialist permit" means a document issued by the Department indicating that the permit holder has been found qualified to perform the Standard Calibration Check Procedure and the Standard Quality Assurance Procedure on a specific approved device.
23. "Standard Calibration Check Procedure" means operations performed by a Quality Assurance Specialist, at least every 31 days, to determine whether a device is accurately measuring alcohol concentration.
24. "Standard Operational Procedure" means operations performed by an Operator for the purpose of determining an alcohol concentration from a specimen of breath.
25. "Standard Quality Assurance Procedure" means operations performed by a Quality Assurance Specialist, at least every 90 days.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-102. Analyst Methods; Approval of Additional Methods

A. An analyst shall use one of the following methods to analyze blood or other bodily substances to determine a person's alcohol concentration:
1. Gas chromatography, or
2. Another method that has been approved by the Director under the procedure in subsections (B) and (C).

B. An applicant for an analyst permit may submit, with the permit application, a request that the Director approve a method other than a method approved under subsection (A)(1) or (2).

C. For a method to be approved by the Director, the method's accuracy and reproducibility shall comply with the following standards:
1. The test results of samples with a standard alcohol concentration shall agree with the established value within the limits of ± 0.01 grams per 100 milliliters of blood or ±10 percent, whichever is greater.
2. The accuracy and precision shall be determined on the basis of ten measurements at four alcohol concentrations between 0.020 and 0.350 grams per 100 milliliters of blood, to include at least one value < 0.100 and one value > 0.250.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-103. Breath-testing Devices

A. The Director may approve devices used to determine alcohol concentration from breath after the Department successfully tests a typical model of the device for compliance with the standards in subsection (B).

B. A device shall meet the following standards of performance:
1. Breath specimens tested shall be alveolar in composition.
2. The device shall be capable of analysis of a solution of known alcohol concentration with an accuracy limit of a systematic error of no more than ± 0.005 grams per 210 liters of breath or ± 5 percent, whichever is greater, and a precision limit of an average standard deviation of no more than 0.0042 grams per 210 liters of breath. The accuracy and precision of the device being evaluated shall be determined on the basis of 10 consecutive measurements at 4 alcohol vapor concentrations that are between 0.020 and 0.350 grams per 210 liters of breath, to include at least one value < 0.100 and one value > 0.250.
3. The device shall be capable of testing a breath sample that results in alcohol concentrations of less than 0.01 grams per 210 liters of breath when alcohol-free subjects are tested.

C. The Department, upon specific findings that a device, method, or breath test procedure is inaccurate, unreliable, or is an unacceptable test for determining alcohol concentration or that its use has been discontinued in the state, shall disapprove in writing further use of the device, method, or procedure.

D. The methods approved by the Director for use by a device to determine alcohol concentration are infrared spectrophotometry and specific fuel cell detection.

E. The following devices are approved by the Director:

Device/Model	**Manufacturer**
Intoxilyzer Model 5000 with or without Vapor Recirculation and with or without Keyboard	CMI, Inc.
Intoxilyzer Model 5000EN	CMI, Inc.
Intoxilyzer Model 8000	CMI, Inc.
RBT AZ (Alco Sensor AZ/RBT AZ)	Intoximeter, Inc.

F. Products included on the National Highway Traffic Safety Administration's Conforming Products List of Evidential Breath Measurement Devices set forth in 69 FR 42237-42239 (July 14, 2004) are approved by the Director as preliminary breath testers to determine alcohol concentration. This document is incorporated by reference and does not include any later amendments or editions. A copy of this document is available from the Department and may be obtained from the National Highway Traffic Safety Administration's web site (www.nhtsa.gov) or by contacting the U.S. Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401.

G. Devices listed in subsection (E) may be used to administer preliminary breath tests.

H. Except when a device is used as a PBT or for other non-evidential testing purposes, an Operator permit and Standard Operational Procedure are required for the operation of devices listed in subsection (E).

I. In addition to the devices approved in subsection (E), the Director may approve, in writing, a device and related Standard Operational and Quality Assurance Procedures after the device has been successfully tested for compliance with the standards in subsection (B) for use prior to and pending the device being added to subsection (E). The approval shall expire three years after its effective date unless subsection (E) is amended to include the approved device.

J. In addition to devices approved as preliminary breath testers in subsection (F), the Director may approve in writing as a PBT a new device placed on subsequent National Highway Traffic Safety Administration's Conforming Products Lists of Evidential Breath Measurement Devices for use pending the new Conforming Products List being added to subsection (F).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-104. Testing Procedures

A. Law enforcement agencies or individuals acting independently of law enforcement agencies who conduct alcohol concentration determinations by means of devices shall utilize a quality assurance program that is conducted by Quality Assurance Specialists or Operators and generate records of periodic maintenance. This quality assurance program shall include:

1. Criteria for ensuring the accurate and proper operation of devices by the regular performance of Calibration Checks and Quality Assurance Procedures as referenced in subsections (A)(2) and (A)(3);
2. Calibration Checks of devices that are performed within 31 days of each other as Standard Calibration Check Procedures or during a test sequence bracketing a duplicate breath test as Concurrent Calibration Check Procedures and recorded according to the requirements of the appropriate Quality Assurance Procedures set forth in Exhibits E-2, E-3, F-2, F-3, G-2, G-3, G-6 and H-2 or as approved by the Director according to R13-10-103(I). These checks shall indicate that the device is capable of determining the value of a standard alcohol concentration solution with an accuracy limit of ± 0.01 grams per 210 liters of breath or ± 10 percent, whichever is greater;
3. Quality Assurance Procedure checks of devices that are performed within 90 days of each other as Standard Quality Assurance Procedures or during a test sequence bracketing a duplicate breath test as Concurrent Quality Assurance Procedures, and recorded according to the requirements of the appropriate Quality Assurance Procedures set forth in Exhibits E-4, E-5, F-4, F-5, G-4, G-5, G-6, H-3 and H-4 or as approved by the Director according to R13-10-103(I). These checks shall indicate that the device is capable of proper operation and is functioning as required by the Quality Assurance Procedures for the device;
4. Standard alcohol concentration solutions, either liquid or gas, that are National Institute of Standards and Technology (NIST) traceable; and
5. Records of Calibration Checks, Quality Assurance Procedures and maintenance or repairs for each device in use.

B. An Operator shall utilize the Standard Operational Procedure approved by the Department for the device being operated in performing tests for the determination of alcohol concentration, as contained in Exhibits E-1, E-6, F-1, G-1, G-6 and H-1 or as approved by the Director according to R13-10-103(I).

C. Duplicate breath tests shall be administered at intervals of not less than five minutes nor more than 10 minutes. The results of both tests shall be within 0.020 alcohol concentration of each other. If the second test is not within 0.020 alcohol concentration of the first test, additional tests shall be administered until the results of two consecutive tests are within 0.020 alcohol concentration.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-105. Permits and Certificates

A. The Department shall issue Analyst permits to qualified applicants, in accordance with R13-10-106(A), who have satisfactorily demonstrated through proficiency testing as specified in R13-10-108(A) their proficiency in conducting an alcohol concentration determination by one or more of the methods listed in R13-10-102. The Analyst permit shall:

1. State the method of alcohol concentration determination the permit holder is approved to utilize and the type of specimen the permit holder is approved to analyze (blood or other bodily substances); and
2. Be valid for one year.

B. An Analyst shall employ, in testing for alcohol concentration in matters arising under A.R.S. Title 28, Chapter 4, Article 3, the same analytical procedures as those employed by the analyst for proficiency testing.

C. The Department shall issue two categories of device permits.

1. Operator permits shall be issued to applicants who qualify under R13-10-106(B) or (E). This permit authorizes operation and performance of associated Quality Assurance Procedures, including Concurrent Calibration Check Procedures and Concurrent Quality Assurance Procedures, performed within a successfully completed test sequence bracketing a duplicate breath test on the device specified on the permit. Operator permits issued after the initial effective date of this Section shall be valid for five years from the date of issue. Permits issued to Operators before the initial effective date of this Section shall remain in effect and be valid for five years after the initial effective date of this Section.
2. Quality Assurance Specialist permits shall be issued to applicants who hold a valid Operator permit and who qualify as a Quality Assurance Specialist under R13-10-106(C) or (E). This Quality Assurance Specialist permit authorizes the holder to perform Quality Assurance Procedures, including Standard Calibration Check Procedures and Standard Quality Assurance Procedures, on the device specified on the permit. Quality Assurance Specialist permits issued after the initial effective date of this Section shall

be valid for five years from the date of issue. Permits issued to Quality Assurance Specialists before the initial effective date of this Section shall remain in effect and be valid for five years after the initial effective date of this Section.

3. Operator and Quality Assurance Specialist permits may be renewed by application as required by R13-10-107 and successful completion of a recertification course approved by the Department.
4. The Department shall issue duplicate (replacement) permits upon request and upon verification of the qualifications set forth in R13-10-106.

D. Law enforcement agencies shall supply the Department, upon request, with a list of current Operator and Quality Assurance Specialist permit holders and shall update the list as required by the Department, but no more frequently than annually.

E. The Department shall issue Instructor certificates to qualified applicants who hold valid Operator and Quality Assurance Specialist permits and who qualify as an Instructor under R13-10-106(D) or (E). The Instructor certificate authorizes the holder to provide breath test training to prospective Operators and Quality Assurance Specialists on a specific approved device. Instructor certificates issued after the initial effective date of this Section shall be valid for five years from the date of issue. Instructor certificates issued before the initial effective date of this Section shall remain in effect and be valid for five years from the initial effective date of this Section. Instructor certificates may be renewed by application as required by R13-10-107 and successful completion of a recertification examination approved by the Department.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-106. Qualifications

A. To qualify for an Analyst permit, a person shall hold a degree from a college or university accredited by a regional accrediting body recognized by the United States Department of Education and have earned 15 or more semester credits, or the equivalent, of chemistry, including three or more credits of organic chemistry.

B. To qualify for an Operator permit, a person shall:

1. Be employed by a law enforcement agency or laboratory that has access to a device for the person's use as set forth in R13-10-103; and
2. Complete a course in the determination of alcohol concentration approved by the Department with a score of 80 percent or better. The Department shall approve courses taught by an Instructor if they contain the following:
   a. Instruction on the effects of alcohol on the human body;
   b. Instruction on and demonstration of the operational principles of the selected device, which shall include a functional description and detailed operational description of the method;
   c. Instruction on the legal aspects of breath tests in general and on the particular method to be employed;
   d. Concurrent Calibration Check Procedures (when applicable to the device) approved by the Department;
   e. Concurrent Quality Assurance Procedures (when applicable to the device) approved by the Department;
   f. Applicant participation with the appropriate device utilizing reference standards, testing of subjects, or other methods that will indicate the actual response of the device; and
   g. Written and practical examination of the applicant for the purpose of determining the person's understanding of the course material and proficiency in operating the device.

C. To qualify for a Quality Assurance Specialist permit, a person shall possess a valid Operator permit to operate the approved device and complete a course of training approved by the Department with a score of 80 percent or better. The Department shall approve courses taught by an Instructor if they contain the following:

1. Review of the theory of breath testing and the operation of the particular testing device;
2. Standard Calibration Check Procedures approved by the Department;
3. Standard Quality Assurance Procedures approved by the Department;
4. Applicant participation with the appropriate device utilizing reference standards, testing of subjects, or other methods that will indicate the actual response of the device; and
5. Written and practical examination of the applicant for the purpose of determining the person's understanding of the course material and proficiency in operating the device.

D. To qualify as an Instructor, a person shall hold valid Operator and Quality Assurance Specialist permits on the device for which instruction is given. In addition, except as provided in subsection (E), all applicants shall complete a comprehensive instructor examination approved and administered by the Department with a score of 90 percent or better. The Department shall approve instructor examinations that include the following:

1. The theory of breath testing and the operation of the specific device, and
2. Procedures for testing instrument accuracy and proper operation in accordance with Calibration Checks and Quality Assurance Procedures approved by the Department.

E. If a device is newly approved and no Operator and Quality Assurance Specialist permits have been issued for the device, a person may qualify to be an Operator, Quality Assurance Specialist, and Instructor for the specific device by completing a Department-administered, manufacturer-endorsed, instructor training course and a comprehensive examination with a score of 90 percent or better. The Instructor training course shall include the following:

1. Review of the theory of breath testing,
2. Instruction on the operation of the device, and
3. Procedures for testing instrument accuracy and proper operation in accordance with Calibration Checks and Quality Assurance Procedures approved by the Department.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-107. Application Processes

A. An applicant for an initial Analyst permit or the renewal of an existing Analyst permit shall complete the form shown as Exhibit A and submit it to the Department. An application for renewal of an Analyst permit shall be submitted no later than 30 days prior to the date the current permit expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.

B. An applicant for an initial Operator permit or the renewal of an existing Operator permit shall complete the form shown as Exhibit B and submitted to the Department. An application for renewal of an Operator permit shall be submitted no later than 30 days prior to the date the current permit expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.

C. An applicant for an initial Quality Assurance Specialist permit or the renewal of an existing Quality Assurance Specialist permit shall complete the form shown as Exhibit C and submitted to the Department. An application for renewal of a Quality Assurance Specialist permit shall be submitted no later than 30 days prior to the date the current permit expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.

D. An applicant for an initial Instructor approval or the renewal of an existing Instructor approval shall complete the form shown as Exhibit D and submitted to the Department. An application for renewal of an Instructor shall be submitted no later than 30 days prior to the date the current certificate expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-108. Examination and Quality Assurance Requirements for Analysts

A. The Department shall require an Analyst permit applicant to successfully demonstrate the applicant's proficiency in making alcohol concentration determinations from test specimens in accordance with subsection (B). The applicant shall be examined only on the methods that relate to the type of determination for which the applicant desires a permit.

B. An applicant shall, before receiving an initial Analyst permit or renewal of an existing Analyst permit, participate in and successfully complete proficiency testing administered by the Department. An applicant shall successfully analyze samples by testing at least three suitable reference standards or control samples with a known alcohol concentration in the range of 0.00 to 0.40 grams per 100 milliliters of blood and having the results agree with the established value within the limits of ± 0.01 grams per 100 milliliters of blood or ±10 percent, whichever is greater. Proficiency testing shall be administered by the Department as follows:

1. An applicant shall correctly analyze all proficiency samples in the set provided by the Department.
2. When returning the results of analyses to the Department, the applicant shall attach an affidavit attesting that the applicant analyzed the proficiency samples without help or input from any other person.
3. An applicant failing to correctly analyze all proficiency samples in the set will be provided an opportunity to successfully analyze a second set of samples.
4. The Department shall deny the application of an applicant who declines or fails to correctly analyze the second set of proficiency samples and shall not issue a permit.
5. An applicant who fails to successfully analyze the second set of proficiency samples and whose application is denied may reapply for an analyst's permit beginning 90 days from the date of denial.

C. An analyst who conducts alcohol concentration determinations shall implement and maintain a quality assurance program. This program shall be designed to ensure the validity of test results by providing for:

1. Chain of custody,
2. Quality control,
3. Analytical procedures,
4. Documentation of test results, and
5. Participation in proficiency testing.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

R13-10-109. Revocation or Suspension of Permits; Appeals

A. The Department may suspend or revoke a permit for any of the following reasons:

1. A false statement on the permit holder's application,
2. The neglect or refusal to examine and report the results of sample specimens given the Analyst permit holder for proficiency testing purposes,
3. The failure of an Analyst to maintain quality control over equipment or reagents necessary for accuracy in reporting,
4. Failure to obtain results on proficiency test samples as indicated in R13-10-108(B),
5. Failure to operate a device according to approved procedures or the failure to analyze blood or other bodily substances according to approved methods, or

6. The failure by a permit holder to maintain documentation required by this Article or to make it available to Departmental representatives for inspection for purposes of administering this Article.

B. When a permit has been suspended or revoked in one or more of the approved methods or devices and there remain one or more methods or devices for which the permittee is approved that are not affected by the revocation or suspension, the permit holder shall return the suspended or revoked permit to the Department. The Department shall issue a replacement permit that shows only those approved methods or devices unaffected by the event leading to the suspension or revocation.

C. The provisions of A.R.S. Title 41, Chapter 6, Article 10 are applicable to denials, revocations, suspensions and administrative appeals.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

EXHIBIT A
APPLICATION FOR BLOOD ALCOHOL ANALYST PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY
Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

Application for Analyst permit to perform analysis of blood or other bodily substances for alcohol concentration determinations.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT _____ RENEWAL _____ PERMIT NUMBER _____

1. Name: _____
*(Full legal name)*_____(Last) _____(First)_____(Middle) (Maiden)

____Name: _____
(As you would like it to appear on permit) (Last) (First)
(Middle - *optional*)

2. Date of Birth: _____
(Month) (Day) (Year)

3. Employer: _____
(Name)

_____
(Address)

_____
(Phone) (Fax)

4. Email address:_____

5. Education: I have earned a degree from an accredited college or university with 15 or more semester credits or the equivalent of college chemistry, including at least 3 credits in organic chemistry. Yes _____ _____ No _____
College(s) attended _____
(City & State) (Year Graduated) (Degree)

_____
(City & State) (Year Graduated) (Degree)

6. Check the analytical method(s) for which you require an Analyst permit:

Gas Chromatography _____ Other:_____

I hereby certify that the information submitted in this application is true and correct.

_____
(Signature of Applicant) (Date)

DPS Form Exh A (Rev 05-1)

Historical Note
New Exhibit A made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT B
APPLICATION FOR BREATH ALCOHOL OPERATOR PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY
Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

Application for an Operator permit to perform alcohol concentration determinations and associated quality assurance procedures on an approved device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT _____ RENEWAL _____

DO YOU HAVE AN OPERATOR PERMIT(S)? YES _____ NO _____

OPERATOR DEVICE(S) / PERMIT NUMBER(S) _____

1. Name: _____
(Full Legal Name) (Last) (First) (Middle) (Maiden)

Name: _____
(As you want it to appear on permit) (Last) (First)
(Middle – *optional*)

2. Employer: _____
(Name)
_____
(Address)

_____
(Phone) (Fax)

3. Email address:_____

4. Operator permit requested for what device(s): _____

I hereby certify that the information submitted in this application is true and correct.

_____
(Signature of Applicant) Badge # (Date)

* * * * * * * * * * * * * * * * * * *

TO BE COMPLETED BY INSTRUCTOR

1. Agency Conducting Training:_____

2. Date and Location of Training:_____
(Date) (Location)

3. Arizona Department of Public Safety course approval number: _____

4. Did applicant successfully complete the course? Pass _____ Fail _____

_____

(Signature of Instructor) (Print Name) (Date)

DPS Form Exh B (Rev 05-1)

Department of Public Safety - Alcohol Testing

Historical Note

New Exhibit B made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT C
APPLICATION FOR BREATH ALCOHOL QUALITY ASSURANCE SPECIALIST PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY
Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

Application for a QAS permit to perform quality assurance procedures on an approved device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT _____ RENEWAL _____

DO YOU HAVE AN OPERATOR PERMIT(S)? YES _____ NO _____

OPERATOR DEVICE(S) / PERMIT NUMBER(S) _____

1. Name: _____
(Full Legal Name) (Last) (First) (Middle) (Maiden)

Name: _____
(As you want it to appear on permit) (Last) (First)
(Middle – *optional*)

2. Employer: _____
(Name)
_____
(Address)
_____
(Phone) (Fax)

3. Email address:_____

4. QAS permit requested for what device(s): _____

I hereby certify that the information submitted in this application is true and correct.

_____
(Signature of Applicant) Badge # (Date)

* * * * * * * * * * * * * * * * * *

TO BE COMPLETED BY INSTRUCTOR

1. Agency Conducting Training:_____

2. Date and Location of Training:_____
(Date) (Location)

3. Arizona Department of Public Safety course approval number: _____

4. Did applicant successfully complete the course? Pass _____ Fail _____

_____

(Signature of Instructor) (Print Name) (Date)

DPS Form Exh C (Rev 05-1)

Historical Note
New Exhibit C made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

EXHIBIT D
APPLICATION FOR BREATH TESTING INSTRUCTOR

ARIZONA DEPARTMENT OF PUBLIC SAFETY
Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

Application for an Instructor certificate to provide Operator and QAS training on an approved device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL APPROVAL _____ RENEWAL _____

DO YOU HAVE AN OPERATOR PERMIT(S)? YES _____ NO _____

OPERATOR DEVICE(S) / PERMIT NUMBER(S)? _____

DO YOU HAVE QAS PERMIT(S)? YES _____ _____ NO _____

QAS DEVICE(S) / PERMIT NUMBER(S) _____

1. Name: _____
(Full Legal Name) (Last) (First) (Middle) (Maiden)

Name: _____
(As you want it to appear on certificate) (Last) (First) (Middle-*optional*)

2. Employer: _____
(Name)

_____
(Address)

_____
(Phone) (Fax)

3. Email address:_____

4. Instructor certificate requested for what device:_____

I hereby certify that the information submitted in this application is true and correct.

_____
(Signature of Applicant) (Date)

* * * * * * * * * * * * * * * * * * *

TO BE COMPLETED BY REGULATOR

1. Arizona Department of Public Safety examination approval number:_____

2. Did applicant successfully attain Instructor approval? _____Pass _____ Fai

_____

(Signature of Regulator) (Print Name) (Date)

DPS Form Exh D (Rev 05-1)

Historical Note

New Exhibit D made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

EXHIBIT E-1
OPERATIONAL CHECKLIST

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL PROCEDURE
INTOXILYZER MODEL 5000

DUPLICATE BREATH TEST

SUBJECT NAME _____
DATE _____
_____ _____
AGENCY _____ _____OPERATOR
INSTRUMENT SERIAL #_____ LOCATION_____
TEST RESULTS _____0. AC TIME _____
0. _____ AC TIME _____
0. _____ AC TIME _____

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From _____ to _____ by _____
(Time) (Time) (Name)

( ) 1. Display reads “PUSH BUTTON TO START TEST” or “PRESS START TEST BUTTON TO START NEXT TEST”. Breath tube is warm to touch.
( ) 2. Press Start Test button.
( ) 3. If display reads “Insert Card”, do so.
( ) 4. Input information in response to display.
( ) 5. Air Blank completed.
( ) 6. If display reads “IS SIMULATOR SOLUTION TEMPERATURE 34° C ± 0.2° C?”, type Y or N and verify Concurrent Calibration Check completed.
( ) 7. Insert mouthpiece into breath tube. Have subject blow as long as possible. Record AC result above.
( ) 8. Air blank completed.
( ) 9. a. If display reads “WAIT”, go to step 11
OR
( ) b. If display reads “TEST COMPLETE”. Go to step 10.
OR
( ) c. If display reads “IS SIMULATOR SOLUTION TEMPERATURE 34° C ± 0.2° C?”, type Y or N and verify Concurrent Calibration Check completed. Go to step 10.
( ) 10. When test complete, remove printed record.
( ) 11. Repeat steps 1 through 9.

Note: Duplicate breath tests shall be administered at intervals of not less than 5 nor more than 10 minutes apart and the two consecutive tests shall agree within 0.020 alcohol concentration.

DPS Form Exh E-1 (Rev 05-1)

Historical Note
New Exhibit E-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT E-2
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000*

STANDARD CALIBRATION CHECK PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____TIME
INTOXILYZER SERIAL # _____ LOCATION _____

( ) 1. Pour a standard alcohol concentration solution into a clean dry simulator jar and assemble the simulator. Ensure that a tight seal has been made. Standard value: 0. _____ AC.
( ) 2. Turn on the simulator and allow the temperature to reach 34° C ± 0.2° C.
( ) 3. Set Intoxilyzer mode selection in the ACA mode by switching mode selection switch #9 on or selecting "C" on keyboard menu.
( ) 4. Attach simulator to the simulator entrance port on the Intoxilyzer.
( ) 5. Intoxilyzer 5000 display reads "READY TO START" or "PUSH BUTTON".
( ) 6. Push Start Test button or press enter on keyboard.
( ) 7. Insert card in response to display.
( ) 8. Air blank completed.
( ) 9. Standard Calibration Check completed. Test results 0. _____
( ) 10. Air blank completed.
( ) 11. When test complete, remove printed record. Attach the record to the completed checklist.
( ) 12. Return mode selection switch #9 to off position after all calibration checks are complete or type Q and enter on keyboard.

SIGNATURE _____

* WITH OR WITHOUT VAPOR RECIRCULATION AND WITH OR WITHOUT KEYBOARD

DPS Form Exh E-2 (Rev 05-1)

Historical Note
New Exhibit E-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT E-3
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000

STANDARD CALIBRATION CHECK PROCEDURE
(OPTION P)

1. Ensure simulator is on and contains a standard alcohol concentration solution of known value, 0.100 AC, at temperature of 34° C ± 0.2° C.
2. Intoxilyzer display reads “READY TO START” or “PUSH BUTTON”.
3. Set Intoxilyzer mode selection in the ACA mode by selecting “C” on the keyboard menu.
4. Press ENTER on keyboard.
5. Air blank completed.
6. Calibration check completed.
7. Confirm Standard Calibration Check reading is in 0.090 to 0.110 range.
8. Air blank completed.
9. Test complete.

Instrument reading is within acceptable accuracy limits. Enter “Y” or “N”.

DPS Form Exh E-3 (Rev 05-01)

Historical Note
New Exhibit E-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT E-4
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000*

STANDARD QUALITY ASSURANCE PROCEDURE

QA SPECIALIST _____AGENCY

DATE _____ _____TIME

INTOXILYZER SERIAL # _____LOCATION

( ) 1. Display reads "READY TO START" or "PUSH BUTTON TO START TEST."

DIAGNOSTIC TESTS
( ) 1. DVM Test check. Setting should be between .010 and .600. Mode selection switch S2 on, S1 and S3 off or keyboard menu selection "H". Reading is _____ .
( ) 2. Display Test check. Mode selection switch S1 on and S2 and S3 off or keyboard menu selection "V".
( ) 3. Printer Test check. Mode selection switch S1, S2, S3 off or keyboard menu selection "P".
( ) 4. Clock time check. Mode selection switch S10 on or keyboard menu selection "E".
( ) 5. Date check. Mode selection switch S11 on or keyboard menu selection "E".

OPERATIONAL TESTS
( ) 1. Alcohol-free subject Test result 0. _____ AC
( ) 2. Error recognition logic system functioning
Invalid test printed
( ) 3. Proper sample recognition system
Invalid sample printed
Deficient sample printed
( ) 4. Standard Calibration Check standard 0. _____ AC
Results: 0. _____ AC

Instrument operating accurately and properly. YES _____ NO _____

COMMENTS _____
_____
_____
_____

SIGNATURE _____
* WITH OR WITHOUT VAPOR RECIRCULATION AND WITH OR WITHOUT KEYBOARD

DPS Form Exh E-4 (Rev 05-1)

Historical Note
New Exhibit E-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT E-5
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000

STANDARD QUALITY ASSURANCE PROCEDURE
(OPTION P)

Display reads “READY TO START” or “PUSH BUTTON TO START TEST.”

DIAGNOSTIC TESTS
1. DVM Test check. Value is between .010 and .600. Keyboard menu selection “H”.
2. Display Test check. Keyboard menu selection “V”.
3. Clock time check. Keyboard menu selection “E”.
4. Date check. Keyboard menu selection “E”.

OPERATIONAL TESTS
1. Alcohol-free subject Test result 0.000 AC.
2. Error recognition logic system functioning.
   Invalid test printed.
3. Proper sample recognition system.
   Invalid sample printed.
   Deficient sample printed.
4. Calibration standard 0.100 AC.

Instrument operating accurately and properly. Enter “Y” or “N”.

DPS Form Exh E-5 (Rev 05-1)

Historical Note
New Exhibit E-5 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT E-6
OPERATIONAL CHECKLIST

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL PROCEDURE
INTOXILYZER MODEL 5000 - WITHOUT VAPOR RECIRCULATION
AND WITHOUT KEYBOARD

DUPLICATE BREATH TEST

SUBJECT NAME _____
DATE _____
_____ _____
AGENCY _____ _____OPERATOR
INSTRUMENT SERIAL #_____ LOCATION_____
TIME OF TEST _____

TEST RESULTS _____0. AC TIME _____
0. _____ AC TIME _____
0. _____ AC TIME _____

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From _____ to _____ by _____
(Time) (Time) (Name)

( ) 1. Display reads “READY TO START” or “PUSH BUTTON TO START TEST”. Breath tube is warm to touch.
( ) 2. Press Start Test button.
( ) 3. If display reads “INSERT CARD”, do so.
( ) 4. Air blank completed.
( ) 5. Insert mouthpiece into breath tube. Have subject blow as long as possible. Record results above.
( ) 6. Air blank completed.
( ) 7. a. If display reads “WAIT”, go to step 8.
OR
b. If display reads “TEST COMPLETE”, go to step 9.
( ) 8. Repeat steps 1 through 7.
( ) 9. When display reads “TEST COMPLETE”, remove test record card. If duplicate tests have not been obtained between 5 and 10 minutes apart with a .020 AC agreement, repeat steps 1 through 7.

Note: Duplicate breath tests shall be administered at intervals of not less than 5 nor more than 10 minutes apart and the two consecutive tests shall agree within 0.020 alcohol concentration.

DPS Form Exh E-6 (Rev 05-1)

Historical Note
New Exhibit E-6 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

EXHIBIT F-1
OPERATIONAL CHECKLIST

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL PROCEDURE
INTOXILYZER MODEL 5000EN

DUPLICATE BREATH TEST

SUBJECT NAME _____
DATE _____
_____ _____
AGENCY _____ _____OPERATOR
INSTRUMENT SERIAL #_____ LOCATION_____
TEST RESULTS _____0. AC TIME _____
0. _____ AC TIME _____
0. _____ AC TIME _____

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From _____ to _____ by _____
(Time) (Time) (Name)

( ) 1. Display reads "PUSH BUTTON TO START TEST" or "PRESS START TEST BUTTON TO START NEXT TEST." Ensure breath tube is warm to touch.
( ) 2. Press START TEST button.
( ) 3. If display reads "INSERT CARD," do so.
( ) 4. Input information in response to display.
( ) 5. Air blank completed.
( ) 6. If the display reads "IS SIMULATOR SOLUTION TEMPERATURE 34° C ± 0.2° C?," check temperature using thermometer, type "Y" or "N;" verify Concurrent Calibration Check completed.
( ) 7. Insert the mouthpiece in the breath tube. Have the subject blow as long as possible. Record AC result above.
( ) 8. Air blank completed.
( ) 9. a. If display reads "WAIT," go to Step 11
OR
b. If display reads "TEST COMPLETE," go to Step 10
OR
c. If display reads "IS SIMULATOR SOLUTION TEMPERATURE 34° C ± 0.2° C?," check temperature using thermometer, type "Y" or "N;" verify Concurrent Calibration Check completed, go to Step 10.
( ) 10. When the display reads "TEST COMPLETE," remove the test record.
( ) 11. Repeat Steps 1 through 9, as necessary.

Note: Duplicate breath tests shall be administered at intervals of not less than 5 nor more than 10 minutes apart and the two consecutive tests shall agree within 0.020 alcohol concentration.

DPS Form Exh F-1 (Rev 05-01)

Historical Note
New Exhibit F-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT F-2
THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000EN

STANDARD CALIBRATION CHECK PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE_____ _____ TIME
INTOXILYZER SERIAL #_____ LOCATION _____

( ) 1. a. _____ Ensure the dry gas tank is attached to the instrument and contains a standard alcohol concentration solution,

OR

( ) b. Pour a standard alcohol concentration solution _____ AC,
( ) 2. Intoxilyzer 5000EN display reads "PUSH BUTTON …."
( ) 3. Ensure Intoxilyzer 5000EN calibration standard is set for "G" for gas or "W" for wetbath.
( ) 4. Type "C" and press ENTER key on the keyboard.
( ) 5. If display reads "INSERT CARD," do so.
( ) 6. Air blank completed.
( ) 7. Standard Calibration Check completed. Test results 0. _____ AC.
( ) 8. Air blank completed.
( ) 9. When display reads "TEST COMPLETE," remove printed record. Attach the record to the completed checklist.
( ) 10. Type "Q" and press the ENTER key on the keyboard.

SIGNATURE_____

DPS Form Exh F-2 (Rev 05-01)

Historical Note
New Exhibit F-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT F-3
THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000EN

STANDARD CALIBRATION CHECK PROCEDURE
(OPTION P)

1. a. Ensure the dry gas tank is attached to the instrument and contains a standard alcohol concentration solution alcohol standard.

   OR

   b. Pour a standard alcohol concentration solution into a clean dry simulator and assemble the simulator. Ensure that a tight seal is made. Turn on the simulator and allow temperature to reach 34° C ± 0.2° C.
2. Intoxilyzer 5000EN display reads “PUSH BUTTON….”
3. Ensure Intoxilyzer 5000EN calibration standard is set for “G” for gas or “W” for wetbath.
4. Type “C” and press the ENTER key on the keyboard.
5. Air blank completed.
6. Calibration check completed.
7. Air blank completed.
8. When display reads “TEST COMPLETE,” type “Q” and ENTER on the keyboard.

DPS Form Exh F-3 (Rev 05-01)

Historical Note
New Exhibit F-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT F-4
THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000EN

STANDARD QUALITY ASSURANCE PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____TIME
INTOXILYZER SERIAL # _____ LOCATION _____

( ) 1. Display reads "PUSH BUTTON…"

DIAGNOSTIC TESTS
( ) 1. Display test check. Keyboard menu selection "V."
( ) 2. Clock time check. Keyboard menu selection "E."
( ) 3. Date check. Keyboard menu selection "E."
( ) 4. Barometric sensor check. Keyboard menu selection "G."

OPERATIONAL TESTS
( ) 1. Alcohol-free subject test result 0. _____ AC.
( ) 2. Error recognition logic system functioning.
Invalid test printed.
( ) 3. Proper sample recognition system.
Invalid test printed.
Deficient sample printed.
( ) 4. Standard Calibration Check standard 0. _____ AC.
Result 0._____ AC.

Instrument is operating properly and accurately. Yes _____ _____ No

COMMENTS _____
_____

_____

_____

SIGNATURE _____

DPS Form Exh F-4 (Rev 05-01)

Historical Note
New Exhibit F-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT F-5
THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000EN

STANDARD QUALITY ASSURANCE PROCEDURE
(OPTION P)

1. Display reads “PUSH BUTTON…”

DIAGNOSTIC TESTS
1. Display test check. Keyboard menu selection “V.”
2. Clock time check. Keyboard menu selection “E.”
3. Date check. Keyboard menu selection “E.”
4. Barometric sensor check. Keyboard menu selection “G.”

OPERATIONAL TESTS
1. Alcohol-free subject test result
2. Error recognition logic system functioning.
   Invalid test displayed.
3. Proper sample recognition system.
   Invalid test displayed.
   Deficient sample displayed.
4. Standard alcohol concentration solution.

Instrument operating properly and accurately. Enter “P” or “F.”

DPS Form Exh F-5 (REV 05-01)

Historical Note
New Exhibit F-5 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT G-1
OPERATIONAL CHECKLIST

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL PROCEDURE
INTOXILYZER MODEL 8000

DUPLICATE BREATH TEST

SUBJECT NAME _____
DATE _____
_____ _____
AGENCY _____ _____OPERATOR
INSTRUMENT SERIAL #_____ LOCATION_____
TEST RESULTS _____0. AC TIME _____
0. _____ AC TIME _____
0. _____ AC TIME _____

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From _____ to _____ by _____
(Time) (Time) (Name)

( ) 1. Display reads "PUSH BUTTON TO START".
( ) 2. Push Start Test button.
( ) 3. Follow automated instructions on instrument display.
( ) 4. If test record reads "Successfully Completed Test Sequence" go to step 5

OR

If test record reads "Not a Successfully Completed Test Sequence", and subject will be tested again, remove test record and go to step 1

OR

If test record reads "Not a Successfully Completed Test Sequence", and subject will not be tested again, go to step 5

( ) 5. Remove test record.

Note: Duplicate breath tests shall be administered at intervals of not less than 5 minutes nor more than 10 minutes apart and the two consecutive tests shall agree within 0.020 alcohol concentration.

DPS Form Exh G-1 (Rev 05-1)

Historical Note
New Exhibit G-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

EXHIBIT G-2
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000

STANDARD CALIBRATION CHECK PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____TIME
INTOXILYZER SERIAL # _____ LOCATION _____

( ) 1. Ensure that gas tank is attached to instrument and contains a standard alcohol concentration solution _____AC.
OR
Pour a standard alcohol concentration solution _____AC, into a clean dry simulator and assemble the simulator. Ensure that a tight seal has been made. Turn on the simulator and allow temperature to reach 34° C ± 0.2° C
( ) 2. Intoxilyzer 8000 display reads "PUSH BUTTON TO START"
( ) 3. Go to the "Control Testing Menu". Select "D" for dry control test or "W" for wet control test. After selection is made press ENTER.
( ) 4. Air blank completed.
( ) 5. Calibration check completed. Test results 0._____AC.
( ) 6. Air blank completed.
( ) 7. Remove printed record. Attach the record to the completed checklist.

SIGNATURE _____

DPS Form Exh G-2 (Rev 05-01)

Historical Note
New Exhibit G-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT G-3
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000

STANDARD CALIBRATION CHECK PROCEDURE
(OPTION P)

1. a. Ensure dry gas tank is attached to instrument and contains a standard alcohol concentration solution alcohol standard.

   OR

   b. Pour a standard alcohol concentration solution into a clean dry simulator and assemble the simulator.
   Ensure that a tight seal has been made. Turn on the simulator and allow temperature to reach 34° C ± 0.2° C
2. Intoxilyzer 8000 display reads “PUSH BUTTON TO START”
3. Go to the “Control Testing Menu”. Select “D” for dry control test or “W” for wet control test. After selection is made press ENTER.
4. Air blank completed.
5. Standard Calibration Check completed.
6. Air blank completed.

DPS Form Exh G-3 (Rev 05-01)

Historical Note
New Exhibit G-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

EXHIBIT G-4
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000

STANDARD QUALITY ASSURANCE PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____TIME
INTOXILYZER SERIAL # _____ LOCATION _____

( ) 1. Display Reads "PUSH BUTTON TO START"

DIAGNOSTIC TESTS
( ) 1. Clock time check.
( ) 2. Date check.

OPERATIONAL TESTS
( ) 1. Alcohol-free subject test result 0._____AC.
( ) 2. Error recognition logic system functioning.
Not a Successfully Completed Test Sequence printed
( ) 3. Proper sample recognition system.
Not a Successfully Completed Test Sequence printed
Deficient sample printed.
( ) 4. Standard Calibration Check standard 0._____AC. Result 0._____AC.

Instrument is operating properly and accurately. YES _____ NO _____

COMMENTS _____
_____

_____

_____

SIGNATURE _____

DPS Form Exh G-4 (Rev 05-01)

Historical Note
New Exhibit G-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT G-5
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000

STANDARD QUALITY ASSURANCE PROCEDURE
(OPTION P)

Display Reads "Push Button to Start"

DIAGNOSTIC TESTS
1. Clock time check.
2. Date check.

OPERATIONAL TESTS
1. Alcohol-free subject test result.
2. Error recognition logic system functioning.
   Not a Successfully Completed Test Sequence printed or recorded.
3. Proper sample recognition system.
   Not a Successfully Completed Test Sequence printed or recorded.
   Deficient sample printed or recorded.
4. Standard alcohol concentration solution.

DPS Form Exh G-5 (Rev 05-01)

Historical Note
New Exhibit G-5 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

EXHIBIT G-6
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL AND QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000

DUPLICATE BREATH TEST WITH CONCURRENT QUALITY ASSURANCE PROCEDURES

SUBJECT NAME _____
DATE _____
_____ _____
AGENCY _____ _____OPERATOR
INSTRUMENT SERIAL #_____ LOCATION_____
SUBJECT TESTS DIAGNOSTIC CHECKS
CALIBRATION CHECKS

0. _____AC TIME _____ _____ _____PASS FAIL _____ 0. AC

0. _____AC TIME _____
_____ PASS _____FAIL _____0. AC
0. _____AC TIME _____ _____ _____

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From _____ to _____ by _____
(Time) (Time) (Name)

( ) 1. Display reads “PUSH BUTTON TO START”.
( ) 2. Push Start Test button.
( ) 3. Follow automated instructions on instrument display.
( ) 4. If test record reads “Successfully Completed Test Sequence” go to step 5

OR

If test record reads “Not a Successfully Completed Test Sequence”, and subject will be tested again, remove test record and go to step 1

OR

If test record reads “Not a Successfully Completed Test Sequence”, and subject will not be tested again, go to step 5

( ) 5. Remove test record.

Note: A successfully completed test sequence includes the following:

- At least a 15-minute deprivation period.
- Successful concurrent diagnostic checks
- Successful Concurrent Calibration Check Procedures bracketing the duplicate breath test
- Duplicate breath test administered at intervals of not less than 5 minutes nor more than 10 minutes apart and the two consecutive tests agreeing within 0.020 alcohol concentration.

DPS Form Exh G-6 (Rev 05-01)

Historical Note

New Exhibit G-6 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT H-1
OPERATIONAL CHECKLIST

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL PROCEDURE
ALCO SENSOR RBT AZ

DUPLICATE BREATH TEST

SUBJECT NAME _____
DATE _____
_____ _____
AGENCY _____ _____OPERATOR
LOCATION _____
RBT AZ SERIAL # _____ ALCO SENSOR AZ SERIAL # _____

TEST RESULTS 0. _____AC TIME _____
0. _____AC TIME _____
0. _____AC TIME _____

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From _____ to _____ by _____
(Time) (Time) (Name)

( ) 1. Depress RBT AZ ON button.
( ) 2. Depress zero set button, select subject or quick test.
( ) 3. Follow RBT AZ and AS AZ display instructions.
( ) 4. Enter case # &/or DL # if required.
( ) 5. Device temperature registers between 10° C and 40° C.
( ) 6. a. If quick test, go to step 7.
b. If subject test, repeat steps 3 – 6 for duplicate test.
c. If the second subject test is not within 0.020 of the first test, repeat steps 3-6.
d. If the second subject test is within 0.020 of the first test, go to step 7.
e. If the third subject test, go to step 7.
( ) 7. Remove test record when printout is complete.
( ) 8. Turn off RBT AZ.

Note: Duplicate breath tests shall be administered at intervals of not less than 5 nor more than 10 minutes and the two consecutive tests shall agree within 0.020 alcohol concentration.

DPS Form Exh H-1 (Rev 05-01)

Historical Note
New Exhibit H-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

EXHIBIT H-2
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
ALCO SENSOR RBT AZ

STANDARD CALIBRATION CHECK PROCEDURE

AGENCY _____DATE

QA SPECIALIST _____ LOCATION _____
RBT AZ SERIAL # _____ ALCO SENSOR AZ SERIAL # _____

( ) 1. Have a standard alcohol concentration solution ready.
This may be a simulator (at 34° C ± 0.2° C) or a dry gas alcohol standard. Standard value: 0._____AC.
( ) 2. Depress RBT AZ ON button.
Depress Time button.
Enter PIN #.
Depress zero button.
( ) 3. Follow RBT AZ and AS AZ display instructions.
( ) 4. Device temperature registers between 10° C and 40° C.
( ) 5. When AS AZ display reads "CHEK", introduce standard for 7 seconds; depress the MANUAL button on the AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)
( ) 6. Test results 0._____ AC.
( ) 7. Remove test record when printout is complete.
( ) 8. Turn off RBT AZ.

COMMENTS _____
_____

_____

_____

SIGNATURE _____

DPS Form Exh H-2 (Rev 05-01)

Historical Note
New Exhibit H-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

EXHIBIT H-3
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
ALCO SENSOR RBT AZ

STANDARD QUALITY ASSURANCE PROCEDURE

AGENCY _____DATE

QA SPECIALIST _____ LOCATION _____
RBT AZ SERIAL # _____ ALCO-SENSOR AZ SERIAL # _____

( ) 1. Have a standard alcohol concentration solution ready.
This may be a simulator (at 34° C ± 0.2° C) or a dry gas alcohol standard. Standard value: 0._____AC.
( ) 2. Depress RBT AZ ON button.
Depress Time button.
Enter PIN #.
Depress zero button.
( ) 3. Follow RBT AZ and AS AZ display instructions.
( ) 4. Device temperature registers between 10° C and 40° C.
( ) 5. When AS AZ display reads "CHEK", introduce standard for 7 seconds; depress the MANUAL button on the AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)
( ) 6. Test results 0. _____ AC.
( ) 7. Remove test record when printout is complete.
( ) 8. Turn off RBT AZ.

( ) 1. Date and time correct.
( ) 2. Alcohol-free subject test result 0._____ AC.
( ) 3. Proper sample recognition system.
( ) 4. Fuel cell response time for a standard solution.
Standard value: _____ AC. Time _____ sec.
( ) 5. Controls, displays, and printer worked correctly during the above quality assurance procedures.

COMMENTS _____
_____

_____

_____

SIGNATURE _____

DPS Form Exh H-3 (Rev 05-01)

Historical Note
New Exhibit H-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

EXHIBIT H-4
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
ALCO SENSOR RBT AZ

CALIBRATION

AGENCY _____DATE

QA SPECIALIST _____ LOCATION _____
RBT AZ SERIAL # _____ ALCO-SENSOR AZ SERIAL # _____

( ) 1. Have a standard alcohol concentration solution ready.
This may be a simulator (at 34° C ± 0.2° C) or a dry gas alcohol standard. Standard value:
0._____ AC.
( ) 2. Depress RBT AZ ON button.
( ) 3. Depress Time button, enter PIN #, depress #1 button.
( ) 4. Follow RBT AZ and AS AZ display instructions.
( ) 5. Device temperature registers between 23° C and 27° C.
( ) 6. After a blank reading of 0.000 is displayed and the standard value is displayed, depress F3.
( ) 7. When AS AZ display flashes "CAL", introduce standard for 7 seconds; depress the MANUAL button on the AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)
( ) 8. Remove test record when printout is complete.
( ) 9. Run a calibration check on the Standard Calibration Check Procedure.
Test results: _____ AC.

COMMENTS _____
_____

_____

_____

SIGNATURE _____

DPS Form Exh H-4 (Rev 05-01)

Historical Note
New Exhibit H-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

DO NOT WRITE
IN THIS AREA
Permit # _____
Date issued _____
Approved by _____

DO NOT WRITE
IN THIS AREA
Permit # _____
Date issued _____
Approved by _____

DO NOT WRITE

IN THIS AREA
Permit # _____
Date issued _____
Approved by _____

28-1322. Preliminary breath tests; rules on approval of devices

A. A law enforcement officer who has reasonable suspicion to believe that a person has committed a violation of section 28-1381 or 28-1382 may request that the person submit to a preliminary breath test or tests before an arrest.

B. In addition to a breath test or tests, the officer may require that the person submit to further testing pursuant to section 28-1321.

C. The director of the department of public safety shall adopt rules prescribing the approval of quantitative preliminary breath testing devices.

28-1323. Admissibility of breath test or other records

A. The results of a breath test administered for the purpose of determining a person's alcohol concentration are admissible as evidence in any trial, action or proceeding on establishing the following foundational requirements:

1. The test was performed using a quantitative breath testing device approved by the department of health services or the department of public safety. A properly authenticated certification by the department of health services or the department of public safety or judicial notice of department of health services or department of public safety rules is sufficient to establish this requirement.

2. The operator who conducted the test possessed a valid permit issued by the department of health services or the department of public safety to operate the device used to conduct the test.

3. Duplicate tests were administered and the test results were within 0.02 alcohol concentration of each other or an operator observed the person charged with the violation for twenty minutes immediately preceding the administration of the test.

4. The operator who conducted the test followed an operational checklist approved by the department of health services or the department of public safety for the operation of the device used to conduct the test. The testimony of the operator is sufficient to establish this requirement.

5. The device used to conduct the test was in proper operating condition. Records of periodic maintenance that show that the device was in proper operating condition are admissible in any proceeding as prima facie evidence that the device was in proper operating condition at the time of the test. Calibration checks with a standard alcohol concentration solution bracketing each person's duplicate breath test are one type of records of periodic maintenance that satisfies the requirements of this section. The records are public records.

B. Compliance with subsection A of this section is the only requirement for the admission in evidence of a breath test result.

C. The inability of any person to obtain manufacturer's schematics and software for a quantitative breath testing device that is approved as prescribed in subsection A of this section shall not affect the admissibility of the results of a breath test pursuant to this section.

D. Records that may be obtained or that are otherwise maintained pursuant to section 28-1327 are admissible as evidence in any trial, action or proceeding.

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28-1324. Breath test rules

The director of the department of public safety shall adopt rules prescribing methods and procedures for the administration of breath tests to determine alcohol concentration. The rules shall include:

1. The approval of quantitative breath testing devices.
2. Procedures for ensuring the accuracy of results obtained from approved breath testing devices.
3. Qualifications for persons who conduct breath tests.
4. Qualifications for persons who instruct others in the operation of breath testing devices.

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28-1325. Breath test operator permits

A. The director of the department of public safety shall issue permits to operators who have received approved instruction and who have demonstrated their ability to accurately operate an approved breath testing device.

B. The director of the department of public safety may revoke the permit of a person who fails to operate a breath testing device according to the rules adopted by the director of the department of public safety.

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28-1326. Blood test; rules; permits

A. The director of the department of public safety shall adopt rules prescribing the approval of methods for the analysis of blood or other bodily substances to determine blood alcohol concentration.

B. The director of the department of public safety shall issue a permit to an analyst who has demonstrated the ability to accurately analyze blood or other bodily substances for alcohol concentration.

C. The director of the department of public safety may revoke the permit of an analyst who either:

1. Has demonstrated an inability to accurately analyze blood or other bodily substances for alcohol concentration.

2. Fails to analyze blood or other bodily substances for alcohol concentration according to rules adopted by the director of the department of health services.